

1 **Joe W. Kirkpatrick (CONS/PE)**
 Atty LeVan, Nancy J. (for Conservator Bobby Kirkpatrick)
 Atty Istanbulian, Flora (court appointed for Conservatee)

Case No. 11CEPR00817

Probate Status Hearing re: Failure to File an Annual or Biennial Account

DOD: 4/24/2013		<p>BOBBY KIRKPATRICK was appointed conservator of the person and of the estate, with bond set at \$45,000.00, on 10/24/2011.</p> <p>Bond was filed on 11/17/11.</p> <p>Letters issued 11/17/11.</p> <p>Inventory and appraisal was filed on 1/26/12 showing the estate valued at \$38,774.57.</p> <p>Notice of Death of Conservatee was filed on 5/14/2013.</p> <p>This status hearing was set for the filing of the annual or biennial account.</p> <p>Notice of the Status Hearing was mailed to Attorney Nancy LeVan and Bobby Kirkpatrick on 10/23/13.</p>	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p>OFF CALENDAR. First and Final Account filed and set for hearing on 1/23/14.</p>
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		Reviewed by: KT	
		Reviewed on: 12/4/13	
		Updates:	
		Recommendation:	
		File 1 - Kirkpatrick	

		EDWARD J. CRABLE , through his parents, Mark Crable and Patricia Crable filed a petition to approve a Special Needs Trust for the benefit of Edward J. Crable.	NEEDS/PROBLEMS/COMMENTS:
		Order approving the Edward J. Crable Special Needs Trust and appointing Patricia Crable as Trustee with bond of \$11,000.00 was signed on 9/25/12.	1. Need current written status report pursuant to Local Rule 7.5 which states in all matters set for status hearing verified status reports must be filed no later than 10 days before the hearing. Status Reports must comply with the applicable code requirements. Notice of the status hearing, together with a copy of the Status Report shall be served on all necessary parties.
Cont. from		Bond of \$11,000.00 was filed on 12/3/12.	
<input type="checkbox"/>	Aff.Sub.Wit.		
<input type="checkbox"/>	Verified	Notice of Status Hearing for the filing of the First Account was mailed to attorney Jay T. Jambeck on 5/2/13.	
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<input type="checkbox"/>	Citation		
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			Reviewed by: KT
			Reviewed on: 12/4/13
			Updates:
			Recommendation:
			File 2 - Crable

Petition to Compel Co-Trustee Duane Alan Lamm to File Report and Account After Written Request; to Remove Duane Alan Lamm as a Co-Trustee; to Redress Breaches of the Trust by Duane Alan Lamm; to Divide and Distribute the Trust Estate; and to Terminate the Trust [Prob. C. 15642 & 17200 et seq.]

Alex Lamm DOD: 11-17-90		ALLENE JOYCE LAMM O'NEAL , Co-Trustee, is Petitioner and states: <ul style="list-style-type: none"> Trustors Alex and Lillian created the Alex and Lillian Lamm Living Trust (the "Trust") on 3-11-88. The Trust was amended and restated on 9-21-90. Alex died on 11-17-90, causing the trust to be divided among the Alex Lamm By-Pass Trust, the Alex Lamm Marital Trust, and the Lillian G. Lamm Survivor's Trust, which remained revocable. The Survivor's Trust was amended twice: on 6-7-04 and 2-17-05. Lillian died on 11-19-06. For purposes of this petition, "Trust" refers to all three trusts collectively. 	NEEDS/PROBLEMS/COMMENTS: Page 3B is Status Re Settlement Minute Order 9-20-12: Paul O'Rourke [McCormick Barstow] is appearing via conference call. Mr. Poochigian advises the Court that he filed his objections this morning. The Court accepts Mr. O'Rourke's representation that no additional parties need to be provided notice. The Court notes that there is no objection by Mr. Poochigian regarding the issue of notice. At the request of Mr. O'Rourke, the Court orders Mr. Poochigian to prepare a formal accounting for the period commencing from the date of death to the present. The Court orders that the accounting to be completed by 11/19/12. Continued to 11/29/12, Status Conference Set on 11/29/12. Minute Order 11-29-12: Parties request the matter be set for trial. Matter set for Court Trial on 3/29/13 with a one-day estimate. The Court sets a Settlement Conference on 2/25/13. Counsel is directed to submit their settlement conference statements along with a courtesy copy for the Court on the Thursday before the hearing. The Court authorizes Mr. O'Rourke to file his objections. The Court advises counsel that it will accept the objections subject to any filing fees. Set on 2-25-13 at 10:30am for Settlement Conference. Additional hearing date: 3-29-13 at 10am for Court Trial. 1. The proposed order includes a blank for a surcharge amount to be filled in for attorney's fees. The Court may require clarification and further documentation regarding the amount requested.
Lillian Lamm DOD: 11-19-06			
Cont. from 092012, 112912, 022513, 031813, 071913, 092013			
	Aff.Sub.Wit.		
✓	Verified		
	Inventory		
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✓	Notice of Hrg		
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✓	Objections		
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✓	Order		
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	FTB Notice		

Petitioner states the Trust provides that she and her brother **DUANE ALAN LAMM** were to become co-trustees on the death of the Trustors; however, since Lillian's death, Duane has asserted exclusive control over most of the assets of the Trust.

The Trust as amended provides that the Marital Trust and the By-Pass Trust are to terminate and be distributed to Duane and Allene in equal shares immediately following Lillian's death.

The Survivor's Trust as amended provides that the Survivor's Trust is to terminate at Lillian's death and is to be distributed as follows:

- To **BLAKE LAMM** (Trustors' grandson) a fractional portion (56.64%) of the Survivor Trust's ownership interest (45.56%) in certain real property in Reedley consisting of approx. 76 acres; and
- To **DUANE** and **ALLENE**, the residue of the Survivor's Trust estate, in equal shares, which includes that the share apportioned to **ALLENE** is to include a certain residence ("Allene's Residence") and that the share apportioned to **DUANE** is to include the Trustors' residence, without affecting the equality of the shares.

SEE ADDITIONAL PAGES

Page 2**Petitioner states:**

- The Trust Estate includes real estate, corporate stock, gemstones and cash, including an undivided 75% ownership interest as tenant in common in certain commercial real property consisting of an office building (the "commercial building") in Reedley, which is leased to Chase Bank. (The other 25% is owned by Duane's former spouse, Linda W. Lamm.)
- Petitioner states that since Lillian's death, Duane has been and continues to collect all rent from the Commercial Building personally and deposits same into his bank account without Allene's consent and in breach of the terms of the Trust.
- The Trust Estate also includes gemstones and precious metals, including specified items, and a Wells Fargo checking account, which is under Duane's exclusive control in breach of the terms of the Trust.
- The Trust Estate also includes 55% of the issued and outstanding common stock of Al Lamm Ranch, Inc., a California corporation. Allene and Duane each own 22.5%. Petitioner states Duane possesses and controls all of the assets of the Corporation and uses those assets for the exclusive benefit of his personal farming operations to the detriment of the Corporation and its majority owner, the Trust.
- The 76 acres of farmland (the "Home Ranch") located in Reedley is owned by the Trust and leased to Rio Vista Limited Partnership under a lease dated 10-1-05 that expires 9-30-20. Petitioner states all rent from the Home Ranch has been and continues to be collected by Duane and deposited in his personal accounts over which he has exclusive control. Duane has not provided Allene with any accounting nor made any distributions of such rental income to Allene in breach of the Trust.

Examiner's Note: It is unclear if this is the same 76 acres as is specified in the devise to Blake Lamm, since the devise indicates that the Trust owns only a partial interest of 45.56%, but this section of the petition indicates that the Trust owns this real property. The Court may require clarification.

- Petitioner states that at Lillian's death, Duane unilaterally assumed the primary duties of administering the Trust Estate, and appointed himself as the Trust decision maker and used his knowledge of the family holdings to single-handedly control the management of the Trust Estate while excluding Allene as a trustee in violation of Probate Code § 15620, which requires unanimous consent of co-trustees for action. Specifically, Petitioner states Duane has insisted on exercising exclusive control over the Commercial Building, Home Ranch and Corporation because those assets provide him with his primary source of income. Duane also holds physical possession of the specified gemstones and precious metals.
- Petitioner states she formally demanded an accounting and proposed division and distribution of the Trust Estate in a letter to Duane's attorney Mark Poochigian on 5-17-12, which letter has been ignored. Duane appears reticent in providing a full and complete disclosure of this acts and proceedings involving the Trust and has been less than forthcoming in his response to Allene's requests for information. Because of Duane's refusal to provide information and his exclusive control over the assets, including all bank accounts, for over five years, Duane should be directed to file full accounting.
- Petitioner states Duane has committed numerous breaches of trust by collecting all rents in connection with the Commercial Building and Home Ranch and depositing them into his personal accounts. By doing so, he has converted assets – a clear breach of trust.
- Duane has personally benefitted from his exclusive control and use of the equipment owned by the Corporation, the controlling shares of which are owned by the Trust. Neither the Corporation nor the Trust has received any benefit from Duane's personal use of such equipment.
- Petitioner further alleges that Duane has taken unauthorized withdrawals of cash from the Trust – another clear breach of the Trust and Probate Code § 15620 – without her consent, and no equalizing distributions have been made to Petitioner.

SEE ADDITIONAL PAGES

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- Finally, Duane has refused for well over five years to cooperate with Petitioner in division and distribution of the Trust Estate to the beneficiaries notwithstanding the terms of the Trust which require termination and immediate division and distribution following Lillian's death.
- Probate Code § 15642 empowers this Court to remove a trustee who has committed a breach or whose hostility or lack of cooperation with the other co-trustees impairs the administration of the Trust. Redress should also include removal of Duane as a co-trustee for his conversion of assets, unauthorized withdrawals, and refusal to cooperate. Such redress will allow Petitioner as the sole trustee to complete the necessary division and distribution as required by the express terms of the Trust.
- Redress should also include attorneys' fees and legal costs, as Petitioner has been forced to take extreme measures to compel Duane to carry out his fiduciary duties. Section 1(f) of the Trust allows the trustee to employ attorneys on behalf of the trust to assist in carrying out her duties. Petitioner, in carrying out her duties, has been required to retain counsel and incur legal costs to compel Duane to carry out his duties. Such fees and costs should be surcharged against Duane's beneficial interest in an amount according to proof.
- The Trust was to terminate on Lillian's death, which was over five years ago. Duane has refused to cooperate with Allene in dividing and distributing the Trust Estate to beneficiaries in accordance with the express terms of the Trust. Under Probate Code §§ 17200(b)(13) and (14), this Court has the authority and should order termination and distribution.

Petitioner requests the Court Order:

- **That Duane be directed to prepare and file within 30 days an account of the Trust from Lillian's death (11-19-06) through present, accompanied by a schedule of property, current market value, and all liabilities of the Trust;**
- **That Duane be compelled to restore to the Trust all Trust assets that he has converted for his personal use and benefit;**
- **That Duane be compelled to either return to the Trust all unauthorized cash advances that he has taken from the Trust Estate as described, plus interest at the max. legal rate, or in the alternative, be compelled to cause the Trust to make an equalizing distribution to Allene, plus interest;**
- **That Duane be removed as a co-trustee of the Trust;**
- **Directing that the Trust be terminated and the Trust Estate be divided and distributed to the Trust beneficiaries in accordance with the express terms of the Trust;**
- **For attorneys' fees and legal costs incurred by Petitioner in connection with this Petition to be surcharged against Duane's share of the Trust Estate; and**
- **For such other and further orders and relief as the Court may deem appropriate.**

Further Notes re status:

On 9-20-12, at the request of Mr. O'Rourke, the Court ordered Mr. Poochigian to prepare a formal accounting for the period commencing from the date of death to the present be completed by 11-19-12.

On 11-20-12, Mr. Poochigian filed a Declaration stating that his office sent a letter to Kenneth Baldwin's office on 11-19-12 enclosing an accounting from 11-19-06 through 10-31-12 (attached).

Minute Order 9-20-12: Paul O'Rourke [McCormick Barstow] is appearing via conference call. Mr. Poochigian advises the Court that he filed his objections this morning. The Court accepts Mr. O'Rourke's representation that no additional parties need to be provided notice. The Court notes that there is no objection by Mr. Poochigian regarding the issue of notice. At the request of Mr. O'Rourke, the Court orders Mr. Poochigian to prepare a formal accounting for the period commencing from the date of death to the present. The Court orders that the accounting to be completed by 11/19/12. Continued to 11/29/12, Status Conference Set on 11/29/12.

Note: The objections filed 9-20-12 state that in approx. Oct. 2007, Duane and Allene came to an agreement regarding division and distribution of trust property, only to have Allene later contend that she did not agree to the distribution. Late in 2009, without involvement of counsel, Duane and Allene came to agreement in principle re division and distribution, which was memorialized by Duane's counsel in a proposed agreement that Allene refused to sign. Allene incorrectly alleges that Duane has excluded her from administration. To the contrary, Duane was forced to assume primary responsibility due to her refusal to respond to calls for participation. Moreover, she has shown herself to be untrustworthy by her conversion of trust assets for personal use. Duane has attempted to fulfill his duties as co-trustee with the utmost good faith. Duane objects to the petition to the extent it is in conflict with these facts. Duane has not committed any breaches of trust, has not converted trust assets for his personal use and/or benefit, should not be removed as a co-trustee, and no attorney fees should be awarded to Allene. In approx. Further, Allene's conversion of trust assets of more than \$23,000 to her own personal use and that of her son should be charged and offset against her beneficial share. Objector prays the petition be denied, for attorney fees and costs, costs of suit incurred herein, and such other and further relief as the Court deems proper.

Note: No accounting has been properly filed for Court review; however, Objections to Accounting of Co-Trustee, Duane Alan Lamm were filed 11-30-12.

Examiner notes that an accounting (attached to Declaration) was sent to Petitioner's attorney; however, the accounting was not filed as a Petition for Court review.

Therefore, Examiner has not reviewed the schedules or the objections.

If the Co-Trustee's Accounting is to be reviewed by the Court, need Petition with appropriate filing fee.

Minute Order 2-25-13: Counsel informs the Court that a settlement agreement is in progress. Matter continued. Status hearing set (Page 4B).

		<p>ALLENE JOYCE LAMM O'NEAL, Co-Trustee, filed Petition to Compel Co-Trustee DUANE ALAN LAMM to File Report and Account after Written Request, to Remove DUANE ALAN LAMM as Co-Trustee, to Redress Breaches of the Trust by DUANE ALAN LAMM, to Divide and Distribute the Trust Estate, and to Terminate the Trust on 8-6-12.</p> <p>DUANE ALAN LAMM filed Objections on 9-20-12.</p> <p>At hearing on 9-20-12, the Court ordered Mr. Poochigian to prepare a formal accounting for the period commencing from the date of death to the present by 11-19-12, and the matter was continued to 11-29-12.</p> <p>On 11-20-12, Attorney Poochigian filed a declaration that appears to contain an informal unverified "accounting" that was sent to Mr. Baldwin.</p> <p>At hearing on 11-29-12, the matter was set for trial on 3-29-13, settlement conference to be held on 2-25-13.</p> <p>On 11-30-12, Allene Joyce Lamm O'Neal filed Objections to Accounting.</p> <p>At hearing on 2-25-13, Counsel informed the Court that a settlement agreement is in progress. The Settlement Conference was taken off calendar and the Court set this status hearing re: Settlement Agreement for 3-18-13, and continued to 7-19-13 per Minute Order.</p>	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p>Minute Order 9-20-13: Mr. Poochigian informs the Court that the case has been settled but they are working on one minor issue.</p> <p>As of 12-4-13, nothing further has been filed.</p> <p>1. Need status of settlement agreement. The petition at Page 4A remains pending.</p>
Cont. from 031813, 071913, 092013			
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Status Rpt			
UCCJEA			
Citation			
FTB Notice			
		<p>Reviewed by: skc</p> <p>Reviewed on: 12-4-13</p> <p>Updates:</p> <p>Recommendation:</p> <p>File 3B – Lamm</p>	

4A Estate of George Anderson & Rose Anderson (Trust) Case No. 13CEPR00085

Atty Sullivan, Robert L. (for George H. Anderson, Jr., Barbara J. O'Bar, and Cheryl M. Black – children/Petitioners)

Petition for: (1) Neglect [W&I C. 15610.57]; (2) Financial Elder Abuse [W&I C. 15610.30]; (3) Recovery of Estate Property [Prob. C. 850, et seq.]; (4) Removal of Trustee for Breach [Prob. C. 15642]

George DOD:01/21/12	GEORGE H. ANDERSON, JR., son, BARBARA J. O'BAR and CHERYL M. BLACK, daughters, are Petitioners.		NEEDS/PROBLEMS/COMMENTS:
Rose DOD: 01/27/12			
	Petitioners state:		
	1. Petitioners are beneficiaries under the terms of the George H. Anderson and Rose M. Anderson Revocable Living Trust dated 05/12/13 (the "Trust").		CONTINUED FROM 10/10/13 Minute Order from 10/10/13 states: Counsel informs the Court that the agreement has been executed and she is waiting to receive it.
Cont. from 031813, 051713, 062113, 062813, 072613, 092013, 101013	2. Steven M. Anderson, also a son of the decedent's, is trustee of the Trust and also a beneficiary of the Trust.		As of 12/04/13, nothing further has been filed.
<input type="checkbox"/> Aff.Sub.Wit.	3. Steven Anderson was appointed successor trustee of the Trust following the deaths of the settlors.		1. Petition does not include the names and addresses of each person entitled to notice as required by Probate Code 17201. (See also, CA Rules of Court 7.902.) Need supplement to Petition.
<input checked="" type="checkbox"/> Verified	4. Under the terms of the Trust, Steven Anderson, George Anderson, Jr., Barbara O'Bar, and Cheryl Black each receive 20% of the Trust assets. The remaining 20% is to be distributed to the settlor's living grandchildren.		2. Need proof of service by mail at least 30 days prior to the hearing to all persons entitled to notice pursuant to Probate Code § 17203.
<input type="checkbox"/> Inventory	5. In approximately 2002, Steven and Ida Anderson (Steve & Ida/Respondents) jointly purchased a piece of property with George & Rose Anderson. Steven and Ida moved onto said property in approximately December 2002 and George and Rose moved onto said property in early 2003. Similar to a duplex, they all lived in one building that was divided into two separate living areas. Steven & Ida lived in 2/3 of the building and George & Rose lived in 1/3 of the building.		3. Need Order.
<input type="checkbox"/> PTC	6. Just prior to moving onto the property, Rose was diagnosed with Alzheimer's disease and George also suffered from significant health problems and dementia. Steven & Ida voluntarily began caring for George and Rose after they moved onto the property; however they failed to provide the care that George & Rose required as outlined below.		Note: A Notice of Hearing with proof of service by mail was filed 03/21/13; however, because the Petition does not list the persons entitled to notice, the Examiner is unable to determine if notice has been sent to all parties as required.
<input type="checkbox"/> Not.Cred.	7. First, Respondents failed to ensure that George & Rose were eating properly. Despite repeated requests, Respondents failed to monitor or track George & Rose's meals, causing missed meals and poor nutrition.		Reviewed by: JF
<input checked="" type="checkbox"/> Notice of Hrg			Reviewed on: 12/04/13
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4A Estate of George Anderson & Rose Anderson (Trust) Case No. 13CEPR00085

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8. Respondents also failed to provide adequate medical care for physical and mental health needs. Specifically, Respondents refused to take Rose to see her doctor, despite a clear need given her deteriorating condition due to Alzheimer's disease. In fact, Respondents altogether failed to take Rose to a single doctor's appointment after 2008 and even missed scheduled appointments with Rose's primary care physician. Similarly, Respondents failed to take George to the doctor or maintain regular doctor visits.
9. Respondents also failed to protect George and Rose from health and safety hazards. Despite assuming the role of caring for George and Rose, Respondents frequently failed to provide adequate protection from hazards. Respondents routinely unplugged their telephone at night in order prevent George & Rose from waking them up, this directly led to injuries to both George and Rose. Rose was injured early one morning and was bleeding profusely. After repeated failed attempts to obtain assistance from the Respondents, George called Barbara O'Bar. By the time Barbara arrived, there was blood all over the house. This was not the only incident where Respondents were unavailable when George and Rose needed their assistance.
10. Respondents also created health and safety hazards within George & Rose's home. Specifically, Respondents kept and maintained live turkeys in George & Rose's garage. Respondents also maintained a live rabbit inside George & Rose's bathroom. As a result, there were animal feces inside George & Rose's home, causing a severe odor and bugs inside the home. The odor and butts were hazardous to George & Rose's health in light of their weakened physical condition.
11. Respondents also failed to assist in providing property hygiene for George & Rose. Both were often visibly filthy and reeked of body odor when Petitioners visited. George was hospitalized on 12/27/11 and the hospital noted that he had "crystals" around his genitals demonstrating an utter and prolonged lack of proper hygiene. During the same hospitalization, George was also found to be severely dehydrated and was believed to have been for approximately 10-14 days. He was also suffering from stage 4 pressure ulcers on his heels, which were so severe; the hospital notified Adult Protective Services ("APS").
12. In December 2011, after APS was notified of George's condition, APS came to the home and investigated Rose's condition as well. At that time, Rose also demonstrated signs of neglect. She was found to have a pressure sore on her tailbone and was also suffering from a bladder infection and ringworm. Ringworm is commonly associated with and transmitted through animal feces, which Respondents failed to clean from George and Rose's home. Further, it was clear that Rose had not been properly bathed and that her hygiene had been severely neglected. Approximately 2 days after the visit from APS, Rose was taken to the Bedford Group, which is a private care home, where she ultimately died. George also died, just weeks after his hospitalization.
13. **First Cause of Action** (Neglect): At all relevant times, George and Rose Anderson were over the age of 65, with George being 94 at the time of his death and Rose being 89. Respondents, having care or custody of George & Rose Anderson both elders under the Welfare and Institutions Code, failed to exercise that degree of care that a reasonable person in a like position would exercise by 1) failing to assist in providing personal hygiene, 2) failing to provide medical care for physical and mental health needs, 3) failing to ensure provision for food, 4) failing to protect from health and safety hazards, and 5) failing to prevent dehydration. As a direct and proximate result of this neglect and physical elder abuse, Decedents suffered damages in an amount according to proof at trial. In addition, Petitioners are entitled to recover punitive damages, and are also entitled to recover remedies provided for in the Welfare & Institutions Code § 15657, including reasonable attorneys' fees and costs.

Continued on Page 3

Dept. 303, 9:00 a.m. Friday, December 6, 2013

14. **Second Cause of Action** (Financial Elder Abuse): For several years prior to Decedent's deaths, Respondents had access to George & Rose's bank account through an ATM card and check book. After gaining access to the bank account, Respondents repeatedly took, appropriated and retained money from George & Rose's account. Despite Respondents' failure to properly care for George & Rose, they routinely paid themselves money from George & Rose's account in order to "compensate" themselves for the care provided. Respondents took, appropriated, and retained said money for a wrongful use and with the intent to defraud George & Rose Anderson. Specifically, Respondents repeatedly withdrew and stole money from Decedent's bank account for their personal gain and without Decedent's knowledge or consent. Petitioners are informed and believe and thereon allege that Respondents wrongfully stole in excess of \$250,000.00 from Decedent's bank account from 2006 until the Decedent's deaths in January 2012. Respondents conduct constituted "financial abuse" within the Welfare & Institutions Code § 15610.30 in that George and Rose were "elders" during the perpetration of the acts of Respondents upon them, and that Respondents tool and appropriated Decedent's property in bad faith to a wrongful use and with intent to defraud, and diminished the resources available to Decedents for their care and support during their lifetime. George & Rose were harmed by Respondent's depletion of their assets. As a direct and proximate result of this financial elder abuse, George & Rose Anderson suffered damages in an amount according to proof at trial. In addition, Petitioners are entitled to recover punitive damages, and are also entitled to recover remedies provided for in the Welfare & Institutions Code § 15657.5, including reasonable attorneys' fees and costs.
15. **Third Cause of Action** (Recovery of Property pursuant to Probate Code § 850): Respondent Steven Anderson holds title and possession to property contained within the Anderson Trust, money held in Decedent's bank accounts at the time of their deaths, and any other property, both real and personal, owned by the Decedent's at the time of their deaths, all of which property rightfully belongs to the Trust. Petitioners claim the right to title and possession of the property as beneficiaries of the Trust.
16. **Fourth Cause of Action** (Removal of Trustee): Prior to George and Rose Anderson's deaths, Steven Anderson committed both physical and financial elder abuse upon George & Rose. He also frequently converted Trust assets for his own use and benefit to the detriment of other beneficiaries. Steven Anderson's conduct was hostile and repugnant to the interests of George & Rose, and to the interests of the Trust. As such, Steven Anderson is not fit or qualified to serve as trustee. Additionally, Steven Anderson committed breaches of trust since assuming the role of trustee. Petitioners are informed and believe that Steven has improperly used Trust funds after appointment as trustee in order to pay attorneys' fees that were incurred for his personal benefit and not the benefit of the Trust. He has further demonstrated hostility towards the other beneficiaries and refused to provide an accounting of Trust assets. In so doing, Steven Anderson breached the fiduciary duties owed to the beneficiaries of the Trust. Namely, Steven Anderson violated the following duties: duty of impartiality (Probate Code § 16003); duty not to use or deal with trust property for the trustee's own profit (§ 16004); duty to preserve trust property (§ 16006); duty to inform (§ 16060); and duty to account (§16061).

Petitioners pray for an Order:

ON THE FIRST CAUSE OF ACTION:

- A. For consequential and special damages proximately cause by Respondents' acts of elder abuse and neglect upon Decedents George & Rose Anderson, according to proof at trial;
- B. For Respondents to be deemed to have predeceased George & Rose Anderson for the purposes of inheritance, pursuant to Probate Code § 259;
- C. For punitive damages, according to proof at trial;
- D. For attorneys' fees and costs; and
- E. For any and all further relief as the Court deems just and proper.

Continued on Page 4

4A Estate of George Anderson & Rose Anderson (Trust) Case No. 13CEPR00085

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ON THE SECOND CAUSE OF ACTION:

- A. For consequential and special damages proximately caused by Respondents' acts of financial elder abuse occasioned upon Decedents George & Rose Anderson, according to proof at trial;
- B. For Respondents to be deemed to have predeceased George & Rose Anderson for the purposes of inheritance, pursuant to Probate Code § 259;
- C. For a constructive trust compelling Respondents to transfer all wrongfully obtained property to the Trust pursuant to Civil Code § 2223 and 2224;
- D. For punitive damages, according to proof at trial;
- E. For a treble award of damages against Respondents pursuant to Civil Code § 3345;
- F. For attorneys' fees and costs; and
- G. For any and all further relief as the Court deems just and proper.

ON THE THIRD CAUSE OF ACTION:

- A. Directing Respondents to transfer to the Trust the property that was wrongfully removed from the Trust and to execute any documents or file any court proceedings necessary in order to fully complete the transfer;
- B. Directing Respondents to immediately deliver possession of to the Trust property that was wrongfully removed from the Trust;
- C. For statutory damages in the amount of twice the amount wrongfully taken by Respondents, pursuant to Probate Code § 859;
- D. For attorneys' fees and costs; and
- E. For any and all further relief as the Court deems just and proper.

ON THE FOURTH CAUSE OF ACTION:

- A. To immediately suspend the powers of the trustee, appoint a temporary trustee or trustees, and compel the trustee to surrender all Trust property to such temporary trustee(s);
- B. To remove the trustee and to appoint a successor trustee or trustees to take possession of the Trust property and administer the Trust;
- C. To compel the trustee to redress his breaches through the payment of monetary damages;
- D. To deny or otherwise reduce the compensation to the trustee;
- E. To impose a constructive trust on property of the Trust which has been wrongfully converted;
- F. To cause proceedings to trace and recover property and proceeds to which the Trust is entitled; and
- G. For any and all further relief as the Court deems just and proper.

Respondent's Opposition to Petition for (1) Neglect; (2) Financial Elder Abuse; (3) Recovery of Estate Property; and (4) Removal of Trustee for Breach of Trust filed 03/18/13 by Steven Anderson and Ida Anderson admits some facts of the Petition, denies the allegations in the Petition and asserts the following affirmative defenses:

- 1. Petitioners fail to state facts sufficient to constitute any grounds for the relief requested in their Petition.
- 2. Petitioners' claims are barred by the applicable statute of limitations.
- 3. Petitioners lack standing to seek the relief requested in their Petition.
- 4. Petitioners are barred by the doctrine of unclean hands.
- 5. Petitioners are barred by the doctrine of laches.
- 6. Respondents allege that at no time during his lifetime was George Anderson suffering from any form of dementia. In fact, throughout his lifetime, George Anderson had excellent memory function and was aware of his surroundings.
- 7. Respondents allege that George and Rose Anderson voluntarily paid Respondents and other caregivers to care for them so that they could remain in their own home.

4A Estate of George Anderson & Rose Anderson (Trust) Case No. 13CEPR00085

Page 5

8. Respondents allege that Petitioners have committed acts of perjury in stating that the contents of the Petition are true and correct and that they are within their own personal knowledge.
9. Respondents allege that Petitioners' claims are in bad faith and with the sole intent of extorting money from Respondents and that in doing so, Petitioners are acting with recklessness, oppression, fraud and/or malice.
10. Respondents allege that all assets belonging to the George H. Anderson and Rose M. Anderson Revocable Living Trust remain titled in the name of the trust and have not been distributed or improperly used by Respondents.
11. Respondents allege that at no time has Steven Anderson failed or refused to provide an accounting for the trust during the time period he has acted as trustee nor has he in any way breached his duties and/or responsibilities as trustee under the trust.

Respondent's pray for an Order as follows:

1. Denying Petitioners' Petition;
2. That Petitioners take nothing by way of their Petition; and
3. That Petitioners be ordered to reimburse Respondents for all reasonable costs of suit herein incurred, including all attorney's fees and costs.

4B Estate of George Anderson & Rose Anderson (Trust) Case No.13CEPR00085**Atty Sullivan, Robert L. (for George H. Anderson, Jr., Barbara J. O'Bar, and Cheryl M.****Black – children/Petitioners)****Status Hearing**

George DOD:01/21/12	GEORGE H. ANDERSON, JR., son, BARBARA J. O'BAR and CHERYL M. BLACK, daughters, filed a Petition for (1) Neglect; (2) Financial Elder Abuse; (3) Recovery of Estate Property; and (4) Removal of Trustee for Breach of Trust on 01/30/13.	NEEDS/PROBLEMS/COMMENTS: <u>CONTINUED FROM 10/10/13</u> Minute Order from 10/10/13 states: Counsel informs the Court that the agreement has been executed and she is waiting to receive it. As of 12/04/13, nothing further has been filed. 1. Need status update.
Rose DOD: 01/27/12		
Cont. from 051713, 062113, 062813, 072613, 092013, 101013	STEVEN ANDERSON, son, and IDA ANDERSON, daughter-in-law, filed an Objection to the Petition on 03/28/13.	
Aff.Sub.Wit.		
Verified		
Inventory	Minute Order from hearing on 03/28/13 set this matter for a status hearing.	
PTC		
Not.Cred.		
Notice of Hrg	Respondent Diane M. Myers' Status Conference Statement filed 06/27/13 states: At the June 3, 2013 Settlement Conference, the parties reached a settlement agreement that was read into the Court's record. Pursuant to the settlement agreement and the Court's order, Petitioner Whitten was to provide attorney Joann Sanoian with a list of all Trust accounts and assets and their values. On 06/26/13, attorney Bill Keeler caused a draft settlement agreement to be circulated to the parties. However, Joann Sanoian has not been provided with the Court-ordered list of trust accounts, assets and values. As such it is requested that that information be provided to Attorney Sanoian to be considered prior to the execution of the settlement agreement.	
Aff.Mail		
Aff.Pub.		
Sp.Ntc.		
Pers.Serv.		
Conf. Screen		
Letters		
Duties/Supp		
Objections		
Video Receipt		
CI Report		
9202		
Order		
Aff. Posting		Reviewed by: JF
Status Rpt		Reviewed on: 12/04/13
UCCJEA		Updates:
Citation		Recommendation:
FTB Notice		File 4B – Anderson

4B

DOD: 12-1-02		RICHARD ALLEN CANADA, Son, was appointed Administrator with Full IAEA with bond of \$17,000.00 on 5-4-04.	NEEDS/PROBLEMS/COMMENTS:
Cont from 041213, 062113, 092013		Bond of \$17,000.00 was filed and Letters issued on 5-7-04.	<u>Minute Order 4-12-13:</u> Counsel informs the Court that Mr. Canada has agreed to work with him with respect to this matter.
Aff.Sub.Wit.		Inventory and Appraisal filed 7-6-04 indicates a total estate value of \$90,000.00 consisting of real property located at 2365 South Lily in Fresno.	<u>Minute Order 6-21-13:</u> No appearances. The Court removes Richard Canada as the administrator and appoints the Public Administrator as the personal representative. Continued to 9-20-13.
Verified			
Inventory			
PTC			
Not.Cred.		On 2-25-13, Attorney C. Michael Farmer filed a Notice of Change of Address, which prompted review of the status of this case.	<u>Minute Order 9-20-13:</u> Ms. Kruthers informs the Court that she will be filing a petition for surcharge and will provide notice to the bonding company at that time. The Court sets the matter for an Order to Show Cause on 12/6/13 regarding failure to appear and imposition of sanctions in the amount of \$500.00 as to Richard Canada. Richard Canada is ordered to be personally present on 12/6/13. Continued to: 12/6/13 at 09:00a.m. in Dept 303. Set on: 12/6/13 at 09:00a.m. in Dept 303 for: Order to Show Cause Re: Failure to Appear; Imposition of Sanctions in the Amount of \$500.00
Notice of Hrg			
Aff.Mail			
Aff.Pub.			
Sp.Ntc.		On 3-1-13, the Court set status hearing for 4-12-13 for failure to file a first account or petition for final distribution.	1. Need first account or petition for final distribution.
Pers.Serv.			
Conf. Screen			
Letters			
Duties/Supp		The matter was continued to 6-21-13. On that date, there were no appearances. The Court removed Mr. Canada and appointed the FRESNO COUNTY PUBLIC ADMINISTRATOR.	2. Need proof of service of Notice of Hearing with a copy of the status report on parties that have requested special notice pursuant to Probate Code §1252.
Objections			
Video Receipt			
CI Report			
9202		Status Report filed 9-9-13 states the Public Administrator has attempted to contact the former administrator by contacting his daughter and the attorney; however, has not been able to make contact. The former administrator's former attorney, C. Michael Farmer, reported that the former administrator may have distributed the proceeds from the sale of the house, the only asset, to him and his sister. If so, the surviving spouse did not receive her 1/3 share, and none of the several creditors were paid. The Public Administrator will continue to attempt to find the former administrator, and requests the Court set an Order to Show Cause requiring Mr. Canada to personally appear, and that this matter be set out for at least 60 days to allow time to investigate.	<u>Note:</u> The file indicates that the decedent left a spouse who relocated to Lapu Lapu City, Philippines, after the decedent's death, and two adult children, including the Administrator, who reside in Fresno.
Order			
Aff. Posting			<u>Note:</u> There have been numerous creditor's claims filed in this estate totaling \$11,748.70.
Status Rpt			
UCCJEA			
Citation			
FTB Notice			Reviewed by: skc
			Reviewed on: 12-4-13
			Updates:
			Recommendation:
			File 5A - Canada

Atty Bohn, Jeffrey D., sole practitioner (for Erlinda M. Verni, surviving spouse)
 Atty Baldwin, Kenneth; Thompson, Timothy L.; Cunningham, Nikole E.; of McCormick Barstow (for Nicola Verni, son, and Antonietta R. Verni, daughter, Trustees)
 Atty Jaech, Jeffrey A.; Marchini, Joseph M.; of Baker Manock & Jensen (for Carmela DeSantis, daughter and beneficiary)

Status Hearing

DOD: 5/25/2009		<p>ERLINDA M. VERNI, spouse, filed on 5/13/2010 a <i>Petition to Set Aside the Non-Probate Transfer of Community Property on Death, by Married Person Without Consent of Spouse</i>; an Amended Petition was filed on 7/30/2010; Second Amended Petition was filed on 10/29/2010.</p> <p>ANTONIETTA ROSA VERNI, daughter and Successor Trustee of the VERNI FAMILY TRUST and the VERNI MARITAL TRUST, and NICOLA VERNI, son and Successor Trustee of the VERNI SURVIVOR'S TRUST, filed on 9/3/2010 a <i>Response to Amended Petition to Set Aside the Non-Probate Transfer of Community Property, etc.</i>; Response to Second Amended Petition was filed on 2/18/2011.</p> <p>Statement of Decision filed 3/14/2013 ordered, among the substantive holdings, that a Status Conference be set regarding outstanding issues remaining before the Court (specifically in part, regarding whether any community property accumulated between the date of marriage of Saverio and Erlinda and the date the Post-Marital Agreement was executed.) The following Status Hearing settings and continuances have occurred:</p> <ul style="list-style-type: none"> • Notice of Setting Hearing (Probate) filed 6/28/2013 set a Status Hearing on 8/30/2013. • Minute Order dated 8/30/2013 states, in pertinent part, that Mr. Childs informs the Court that he has tried to certify this matter for appeal, but it was rejected. Trial date to be addressed at the [9/27/2013] hearing. • Minute Order dated 9/27/2013 continued the matter to 10/17/2013 based upon Mr. Childs' inability to appear. • Minute Order dated 10/17/2013 continued the matter to 10/30/2013. • Minute Order dated 10/30/2013 states Mr. Thompson is directed to advise Mr. Bohn of the next hearing date; matter continued to 12/6/2013. • Minute Order dated 11/7/2013 (Matter Not on Calendar) set a Status Hearing on 11/21/2013 at 9:00 a.m., stating: At request of counsel, the matter is set for <i>Settlement Conference</i> on 2/3/2014 and <i>Court Trial</i> on 2/10/2014. Trial estimate is 1 – 2 hours. Counsel is directed to submit their settlement conference statements along with courtesy copies for the Court one week before the hearing. • Minute Order dated 11/21/2013 states no appearances. 	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p>Note: The Verni Family Trust (10CEPR00639) is set for several matters including a Court Trial on 12/6/2013 at 10:30 a.m.</p> <p>1. Need current status report pursuant to Local Rule 7.5(B).</p>
Cont. from 083013, 092713, 101713, 103013			
Aff.Sub.W.			
Verified			
Inventory			
PTC			
Status Rpt	X		
Notice of Hrg			
Aff.Mail			
Aff.Pub.			
Sp.Ntc.			
Pers.Serv.			
Conf. Screen			
Letters			
Duties/S			
Objection			
Video Receipt			
CI Report			
9202			
Order			
Aff. Post			
Notice Creditors			
UCCJEA			
Citation			
FTB Notice			
		<p>Reviewed by: LEG</p> <p>Reviewed on: 12/4/13</p> <p>Updates:</p> <p>Recommendation:</p> <p>File 7 – Verni</p>	

Status Hearing Re: Filing of the First Account

Age: 15	<p>CHRISTINA ROBERTS, mother, was appointed Guardian of the Estate on 07/09/12. Letters were issued on 07/17/12.</p> <p>Minute Order from 07/09/12 set this matter for status re filing of the First Account.</p> <p>Minute Order from Status hearing regarding filing of the Inventory & Appraisal on 11/16/12 states: Counsel informs the Court that they don't anticipate doing an inventory & appraisal as nothing will be going into the guardianship estate.</p>	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p><u>CONTINUED FROM 09/13/13</u></p> <p>1. Need First Account and Report of Guardian <u>or</u> current written status report.</p> <p>Note: A Special Needs Trust was established for Jennifer Roberts on 11/06/12. Counsel informed the Court that no assets would be filed in this guardianship estate at a hearing regarding status of filing the Inventory & Appraisal on 11/16/12. It is unclear whether this guardianship of the estate needs to remain open based on counsel's representation that no assets will be moved into the estate. If no assets are to come into the guardianship estate, a Petition to Terminate the guardianship may be appropriate. The Court may require further information to determine whether this guardianship of the estate needs to remain open.</p>
Cont. from 091313		
Aff.Sub.Wit.		
Verified		
Inventory		
PTC		
Not.Cred.		
Notice of Hrg		
Aff.Mail		
Aff.Pub.		
Sp.Ntc.		
Pers.Serv.		
Conf. Screen		
Letters		
Duties/Supp		
Objections		
Video Receipt		
CI Report		
9202		
Order		
Aff. Posting		
Status Rpt		
UCCJEA		
Citation		
FTB Notice		
<p>Reviewed by: JF</p> <p>Reviewed on: 12/04/13</p> <p>Updates:</p> <p>Recommendation:</p> <p>File 8 - Roberts</p>		

DOD: 8/25/12	DELIA GONZALEZ was appointed as Administrator of the estate with limited IAEA and with bond set at \$100,000.00 on 10/10/12.	NEEDS/PROBLEMS/COMMENTS: Note: A Petition for Preliminary Distribution has been filed and is set for 12/12/13.
	Bond was filed on 10/15/12.	
	Letters issued on 10/15/12.	
Cont. from	Inventories and appraisals were filed totaling \$2,416,144.97.	
Aff.Sub.Wit.	Additional bond of \$100,000.00 was filed on 2/1/13 (total bond amount is \$200,000.00).	
Verified	Order allowing full IAEA authority signed on 2/28/2013.	
Inventory	Status Report filed on 11/21/13 states all assets of the estate have been inventoried. In addition to the task of paying estate obligations, assisting in the sale of estate property, the Administrator has worked diligently with the estate's accountant to resolve outstanding issues with the Internal Revenue Service (IRS) and the Employment Development Department (EDD).	
PTC	There are two outstanding litigation issues: (1) the parties to Francisco De La Mora vs. Irlybird, case no. 12CECG02162 have reached an agreement. (2) The Jesus Rivera vs. Delia Gonzalez case no. 12CEDB01695 is still in negotiations.	
Not.Cred.	The Decedent had an interest in 4 businesses (1) JDM Brokerage Inc. must remain open until the Jesus Rivera claim is settled. (2) JDM Transport Inc. has an outstanding EDD issue to resolve. (3) L&M, Inc. has an outstanding IRS issue that must be resolved before the corporation can be sold or liquidated. (4) The sale of D.F. & Associates was completed earlier this month and the administrator received the Decedent's share of the proceeds on 11/21/13.	
Notice of Hrg		
Aff.Mail		
Aff.Pub.		
Sp.Ntc.		
Pers.Serv.		
Conf. Screen		
Letters		
Duties/Supp		
Objections		
Video Receipt		
CI Report		
9202		
Order		
Aff. Posting		
Status Rpt		
UCCJEA		
Citation		
FTB Notice		
Please see additional page		Reviewed by: KT Reviewed on: 12/4/13 Updates: Recommendation: File 9 – De La Mora

Status Report cont. Decedent had an interest in 11 parcels of real property. All but one has been sold.

It is anticipated that the first account will ready for the court's review shortly after the first of the new year.

DOD: 8/25/12	DELIA GONZALEZ was appointed as Administrator of the estate with limited IAEA and with bond set at \$100,000.00 on 10/10/12.	NEEDS/PROBLEMS/ COMMENTS:
	Bond was filed on 10/15/12.	
	Letters issued on 10/15/12.	Note: A Petition for Preliminary Distribution has been filed and is set for 12/12/13.
Cont. from	Inventories and appraisals were filed totaling \$2,214,083.33.	
Aff.Sub.Wit.	Additional bond of \$100,000.00 was filed on 2/1/13 (total bond amount is \$200,000.00).	1. Need proof of service of the Status Report on: a. Warren Paboojian b. Fresno County Dept. of Child Support Services c. Linda K. Durost - Pursuant to Requests for Special Notice.
Verified	Order allowing full IAEA authority signed on 2/28/2013.	
Inventory	Status Report filed on 11/21/13 states all assets of the estate have been inventoried. In addition to the task of paying estate obligations, assisting in the sale of estate property, the Administrator has worked diligently with the estate's accountant to resolve outstanding issues with the Internal Revenue Service (IRS) and the Employment Development Department (EDD).	
PTC	There are two outstanding litigation issues: (1) the parties to Francisco De La Mora vs. Irlybird, case no. 12CECG02162 have reached an agreement. (2) The Jesus Rivera vs. Delia Gonzalez case no. 12CEDB01695 is still in negotiations.	
Not.Cred.	The Decedent had an interest in 4 businesses (1) JDM Brokerage Inc. must remain open until the Jesus Rivera claim is settled. (2) JDM Transport Inc. has an outstanding EDD issue to resolve. (3) L&M, Inc. has an outstanding IRS issue that must be resolved before the corporation can be sold or liquidated. (4) The sale of D.F. & Associates was completed earlier this month and the administrator received the Decedent's share of the proceeds on 11/21/13.	
Notice of Hrg		
Aff.Mail		
Aff.Pub.		
Sp.Ntc.		
Pers.Serv.		
Conf. Screen		
Letters		
Duties/Supp		
Objections		
Video Receipt		
CI Report		
9202		
Order		
Aff. Posting		
Status Rpt		
UCCJEA		
Citation		
FTB Notice		
Please see additional page		Reviewed by: KT Reviewed on: 12/5/13 Updates: Recommendation: File 10 – De La Mora

Status Report cont. Decedent had an interest in 11 parcels of real property. All but one has been sold.

It is anticipated that the first account will ready for the court's review shortly after the first of the new year.

Atty Widdis, Lawrence A.; Widdis, Laura, of Widdis & Widdis, Glendale (for Petitioner Carol J. Wertheim)

Atty Fanucchi, Edward L., of Quinlan Kershaw & Fanucchi (Court-appointed for Conservatee)

**Petition for Appointment of Probate Conservator of the Person and Estate
(Prob. C. 1820, 1821, 2680-2682)**

Age: 91 years		<p>CAROL J. WERTHEIM, daughter, is Petitioner and requests appointment as Conservator of the Person with medical consent and dementia powers to administer dementia medications; and of the Estate with bond set at \$255,700.00.</p> <p>Estimated Value of the Estate:</p> <table> <tr> <td>Personal property</td> <td>-</td> <td>\$250,000.00</td> </tr> <tr> <td>Annual income</td> <td>-</td> <td>\$ 5,700.00</td> </tr> <tr> <td>Total</td> <td>-</td> <td>\$255,700.00</td> </tr> </table> <p>Capacity Declaration of Jeffrey Mar, Ph.D., filed 6/3/2013 supports request for dementia powers and medical consent powers.</p> <p>Voting Rights NOT Affected</p> <p>Petitioner states the proposed Conservatee is 91 years of age and has atypical dementia with exaggeration of longstanding domineering and controlling personality tendencies that have become inappropriate, and at times, abusive to those around him, particularly his spouse [LAVERNE YOUNGBERG.] Petitioner states the proposed Conservatee has lost much of his cognitive and functional abilities, lacks judgment and is paranoid, and he is unable to provide for his medical care, food, clothing or shelter. Petitioner states proposed Conservatee has been housed in, and needs to continue to reside in, an assisted living caretaking environment.</p> <p>Court Investigator Jo Ann Morris' Report was filed on 6/7/2013.</p> <p align="center">~Please see additional page~</p>	Personal property	-	\$250,000.00	Annual income	-	\$ 5,700.00	Total	-	\$255,700.00	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p>Continued to 12/10/2013 at 10:00 a.m. in Dept. 303.</p> <p>Court Investigator Advised Rights on 6/5/2013.</p> <p>Continued from 10/25/2013. Please see First Additional Page for contents of <i>Minute Order</i> dated 10/25/2013.</p> <p>Note: If Court grants Conservatorship of the Estate, bond is required pursuant to Probate Code § 2320 and CA Rule of Court 7.207. Court will require confirmation regarding the value of proposed Conservatee's estate for calculation of the bond.</p> <p>Note: If Petition is granted for Conservatorship of the <u>Estate</u>, Court will set status hearings as follows:</p> <ul style="list-style-type: none"> • Friday, January 10, 2014 at 9:00 a.m. in Dept. 303 for filing proof of bond; • Friday, April 11, 2014 at 9:00 a.m. in Dept. 303 for filing of inventory and appraisal; and • Friday, February, 13, 2015 at 9:00 a.m. in Dept. 303 for filing of first account and/or petition for final distribution. <p>Pursuant Local Rule 7.5, if the documents noted above are filed 10 days prior to the dates listed, the hearings will be taken off calendar and no appearance will be required.</p> <p align="center">~Please see additional page~</p>
Personal property	-		\$250,000.00									
Annual income	-		\$ 5,700.00									
Total	-		\$255,700.00									
Cont. from 062013, 072513, 102513												
<input type="checkbox"/>	Aff.Sub.Wit.											
<input checked="" type="checkbox"/>	Verified											
<input type="checkbox"/>	Inventory											
<input type="checkbox"/>	PTC											
<input type="checkbox"/>	Not.Cred.											
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<input checked="" type="checkbox"/>	Conf. Screen											
<input checked="" type="checkbox"/>	Cap. Dec.											
<input checked="" type="checkbox"/>	Duties/S											
<input type="checkbox"/>	Objections											
<input checked="" type="checkbox"/>	Video Receipt											
<input checked="" type="checkbox"/>	CI Report											
<input type="checkbox"/>	9202											
<input checked="" type="checkbox"/>	Order											
<input checked="" type="checkbox"/>	Letters											
<input type="checkbox"/>	Status Rpt											
<input type="checkbox"/>	UCCJEA											
<input checked="" type="checkbox"/>	Citation											
<input type="checkbox"/>	FTB Notice											
		<p>Reviewed by: LEG</p> <p>Reviewed on: 12/3/13</p> <p>Updates:</p> <p>Recommendation:</p> <p>File 1 – Youngberg</p>										

Minute Order dated 10/25/2013 from the hearing on the Petition for Appointment of Probate Conservator of the Person and Estate appoints Carol Wertheim as Temporary Conservator of the Person, and states in pertinent part:

- Dan Fry was present on 7/25/2013 and he is not present here today;
- Mr. and Mrs. Youngberg were directed to be present today and they are not;
- A representation has been made to the Court that the terms of the mediation agreement have not been adhered to, specifically the installation of the telephone; and
- On 7/25/2013, Mr. Fanucchi was ordered to set up an appointment to have Ellard Youngberg examined, which did not take place until 10/23/2013;
- The Court appoints Carol Wertheim as temporary conservator of the person with limited powers to facilitate visits as deemed appropriate, ensure the installation of the telephone, look into a hearing device, and to take such actions as deemed necessary to facilitate communication with the staff at the facility regarding meals etc.;
- The temporary conservator shall be limited to these powers until further order of the Court;
- This temporary conservatorship does not authorize the execution of documents or any estate planning on behalf of Ellard Youngberg;
- The Court indicates to the parties that it is issuing this temporary conservatorship based on what is believed to be in the best interest of Ellard Youngberg, and based on the voluntary mediation agreement that was not followed;
- The Court orders that the temporary conservatorship expire on 12/6/2013;
- Mr. and Mrs. Youngberg are ordered to be present at the next hearing [on **12/10/2013**].

Notes for background:

- ***Minute Order dated 7/25/2013*** states the Court informs Mr. Gromis and Mr. Fanucchi to update the estate planning documents appropriately. Mr. Fanucchi is ordered to set up an appointment for another examination for Mr. Youngberg. The Court would like Mr. and Mrs. Youngberg present at the next hearing. Parties agree to meet for mediation today at 1:30 p.m.
- ***Minute Order dated 6/20/2013*** states Ms. Widdis and Mr. [Jason] Wertheim are appearing via Courtcall. The Court indicates to the parties that per the investigative report, it appears that a conservatorship is not necessary. The Court directs Mr. Gromis to provide copies of the estate planning and other documents to Mr. Widdis.

Status Report and Request for Continuance of Sixty Days filed by Attorney Fanucchi on 10/17/2013 states:

- At the previous Mediation on 9/20/2013, it was agreed that the proposed Conservatee would be examined by a licensed psychiatrist which the undersigned was to arrange;
- The attorneys for the Petitioner, Carol Wertheim, have agreed to permit the examiner of the proposed Conservatee by **HOWARD B. TERRELL, M.D.**, Board Certified in Psychiatry and Forensic Psychiatry;
- Medical records were ordered on 10/10/2013 for Dr. Terrell to review for preparation of his report following the examination;
- A continuance of the Further Status Hearing [sic] for **60 days** is requested to allow time for the examination, for receipt of medical records, preparation of Dr. Terrell's Report, and subsequent service on the parties, and a further Mediation, if necessary.

~Please see additional page~

Second Supplement to Petition Re: (1) Additional Capacity Declaration; (2) Declaration Re: Conservsation with Grandfather on 9/21/2013; (a) Isolation at meals; (b) Excluded from Family Gatherings; (c) Medium/Long Term Memory Issues; (d) Misunderstanding of Surgical Risks; (e) Signing of Estate Planning Documents; (f) Do Not Resuscitate Order Not Accurate; (g) Specific Mental Ability Findings filed by CAROL WERTHEIM on 10/18/2013 states, in brief sum:

- At the hearing on 7/25/2013, the Court ordered the proposed Conservatee be reexamined by a medical professional and, since Petitioner and her attorney do not know any doctors in the Fresno area, the court-appointed counsel Edward L. Fanucchi was to arrange for the examination;
- At the second medication on 9/20/2013, it was agreed by all those present that the Youngberg family doctor, Dr. Rubio, not be the examiner;
- To date and to the best knowledge of Petitioner and her attorney, **no** additional examination f Mr. Youngberg has been completed [*emphasis in original*];
- Attached as *Exhibit A* is a *Capacity Declaration* completed by **JASON WERTHEIM, M.D., Ph.D.**, who is a licensed physician in the State of Illinois; *Exhibit B* is a declaration by Dr. Wertheim discussing proposed Conservatee's condition in detail; *Exhibit C* is Dr. Wertheim's curriculum vitae;
- Petitioner alleges that the conclusions of her son, Dr. Wertheim, mirror those of **JEFFREY MAR, M.D., Ph.D.**, as stated in the *Capacity Declaration* filed 6/3/2013 by him, and the 6/9/2012 handwritten evaluation of the proposed Conservatee by Dr. Mar attached as *Exhibit D*;
- Attached as *Exhibit E* is an Advanced Health Care Directive purportedly signed by Mr. Younberg on 9/3/2013 and notarized by Attorney David Paul Gromis;
- Attached as *Exhibit F* is a HIPPA Authorization for Release of Protected Health Information, offered, signed and notarized through the law office of Mr. Gromis dated 9/3/2013;
- Petitioner states it at the least an inappropriate time for her father to be signing any estate planning documents or HIPPA release forms while the conservatorship matter is pending, especially because Petitioner doubts preparation of said documents was her father's idea;
- **Therefore, Petitioner asks the Court to prohibit any person from offering Mr. Youngberg estate planning documents until this matter is decided** [*emphasis added*];
- Attached as *Exhibit G* is a copy of the Mediation Agreement signed by court-appointed attorney Edward L. Fanucchi, Dr. Jason Wertheim, Petitioner Carol Wertheim, and Dan Fry, son of Mrs. Youngberg, on 9/20/2013;
- Petitioner requests that the Court review the second agreement listed on page 1 of the Mediation Agreement (*Exhibit G*) which discusses phone service in Mr. Youngberg's room and who is responsible for ordering service – Mr. Fry; to date **no** phone has been installed [*emphasis in original*]; Petitioner states this is further proof of the isolation of Mr. Youngberg by Mrs. Youngberg's family and their unwillingness to comply with voluntary agreements;
- Petitioner requests that the Court review page 3 of the Mediation Agreement (*Exhibit G*) which states the parties agreed on 9/20/13 that through the use of Mrs. Youngberg's cell phone, Mr. Youngberg would be available for phone calls from Petitioner and Dr. Wertheim on the first and third Sunday of the month between 3 and 4 p.m. or as mutually agreed; Attached as *Exhibit H* is an email from Dr. Wertheim stating he couldn't talk to his grandfather on the first Sunday he was supposed to be available through Mrs. Youngberg's cell phone;
- Petitioner states this is further proof of the isolation of Mr. Youngberg and the unwillingness to comply with voluntary agreements.

Petitioner Carol Wertheim asks that the Court approve her petition at this hearing since there is substantial evidence that Mr. Youngberg needs a conservator, that he is being pressured to sign estate planning documents, that he does not understand and therefore cannot agree to surgery, and that he is being isolated from his daughter and grandson.

~Please see additional page~

Dept. 303, 9:00 a.m. Friday, December 6, 2013

Status Report and Recommendations of Court-Appointed Counsel filed by Edward L. Fanucchi on 6/19/2013 states:

- He met for almost 3 hours with the proposed Conservatee, his wife Laverne Youngberg, and his daughter, Carol Wertheim, at Sierra View Homes in Reedley, where the elder Youngbergs reside in separate apartments, and they are with each other on a daily basis; he invited the daughter to attend so he could get an understanding of the forces within the family that have caused the filing of this *Petition* by the daughter;
- The interval history within 12 months indicates a mistrust by Mrs. Youngberg of the motives of Ms. Wertheim; Ms. Wertheim has noted estrangement with her father and Mrs. Youngberg, and this has caused Ms. Wertheim to become frustrated by her lack of involvement in the care and life of her father; things have happened on both sides that have caused this lack of good feelings in the relationship;
- Mr. Youngberg and his daughter express love for each other; it is apparent that both father and daughter share the same controlling personalities, and that personality is not meeting with acceptance from Mrs. Youngberg and her son, Daniel Fry, who is playing an ever-increasing role in the financial affairs of the Youngbergs;
- Mr. Youngberg is mentally alert, focuses on subject matter, is oriented to time, place, person, and thing, and does look to his wife for her reassurance on most matters;
- Mr. Youngberg is not aware of the extent of his assets, nor does his wife seem to be so; they were surprised by the list of assets in excess of **\$700,000.00** prepared by their estate planning attorney, David Gromis; they were unaware of the effect of joint tenancy, especially as to any accounts where one of the joint tenants was someone other than the two of them;
- The Youngbergs repeated that on the death of the last of them, they expect their estate to be divided into 4 equal shares, one share to each of the 3 children of Mrs. Youngberg and one share to the only child of Mr. Youngberg;
- There would have been no way for me to have understood the family dynamics without the presence of Mr. Youngberg's daughter, who is a schoolteacher and who presents herself quite well both in dignity and communication;
- **Recommendations:**
 1. A Conservatorship should not be granted to anyone at this point in the state of health of Mr. Youngberg; he apparently has Power of Attorney in favor of Daniel Fry, and that seems to be working well; he has spoken to Attorney Gromis who prepared the estate planning documents which have yet to be executed, and Mr. Gromis may have some hesitation because of a psychological evaluation done by Psychologist Jeffrey Mar, but it appears that Mr. Youngberg is competent in understanding, focusing, and judgment, although he is getting assistance from his wife and her son Daniel Fry, as well as Mr. Gromis;
 2. If a Conservatorship is deemed appropriate, there should be Co-Conservators with Ms. Wertheim being one along with another from Mrs. Youngberg's family; it would be totally inappropriate to grant the *Petition* which would be contrary to the wishes of Petitioner's father and Mrs. Youngberg; it would stir up emotions that would be highly unsettling to the family, and it would not benefit Mr. Youngberg who is being taken care of quite well through residential care and through his wife and his Attorney-in-fact; there is no question that this daughter [Petitioner] can be and should be involved in his life, and, through the meeting yesterday, a door has been opened to allow this to happen.

~Please see additional page~

Supplement to Petition Regarding Co-Conservators as Suggested by Court-Appointed Counsel filed by Petitioner Carol Wertheim on 7/15/2013 states:

- **Court-appointed Attorney's Report:** In the report filed by the court-appointed attorney for the proposed Conservatee, Attorney Edward Fanucchi, it is suggested on page 2 that if a conservatorship is deemed appropriate by the Court that Ms. Wertheim and Daniel Fry be appointed as Co-Conservators of the person and estate;
- **Petitioner Accepts Proposal:** Notice is hereby given that the Petitioner, Carol Wertheim, accepts advice given by Mr. Fanucchi and asks the Court to appoint her and Daniel Fry as Co-Conservators of the person and estate of her father;
- Petitioner is currently in Chicago, Illinois, assisting her son and family move into a new home (attorney signed the supplement on her behalf with her knowledge and approval, dated 7/11/2013.)

Age: 18 years		<p>DELIA GONZALEZ, paternal aunt, RAFAEL DE LA MORA MARTIN and MARIA DE JESUS GOMEZ MUNOZ, paternal grandparents were appointed guardians of the person on 10/31/12.</p> <p>DELIA GONZALEZ was appointed guardian of the estate on 10/31/12.</p> <p>Letters issued on 10/31/12.</p> <p>This status hearing was set to inform the court of the status of the assets to be received from the estates of the minor's deceased parents Lorena De La Mora (page 9) and Francisco De La Mora (page 10).</p>	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p>1. Need current written status report pursuant to Local Rule 7.5 which states in all matters set for status hearing verified status reports must be filed no later than 10 days before the hearing. Status Reports must comply with the applicable code requirements. Notice of the status hearing, together with a copy of the Status Report shall be served on all necessary parties.</p>
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		<p>Reviewed by: KT</p> <p>Reviewed on: 12/5/13</p> <p>Updates:</p> <p>Recommendation:</p> <p>File 11 – De La Mora</p>	

Status Hearing Re: Receipt of Assets from the Estate

Age: 16 years		DELIA GONZALEZ , paternal aunt, RAFAEL DE LA MORA MARTIN and MARIA DE JESUS GOMEZ MUNOZ , paternal grandparents were appointed guardians of the person on 10/31/12.	NEEDS/PROBLEMS/COMMENTS: 2. Need current written status report pursuant to Local Rule 7.5 which states in all matters set for status hearing verified status reports must be filed no later than 10 days before the hearing. Status Reports must comply with the applicable code requirements. Notice of the status hearing, together with a copy of the Status Report shall be served on all necessary parties.
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			Reviewed by: KT
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			Updates:
			Recommendation:
			File 12 – De La Mora

Age: 13 years		<p>DELIA GONZALEZ, paternal aunt, RAFAEL DE LA MORA MARTIN and MARIA DE JESUS GOMEZ MUNOZ, paternal grandparents were appointed guardians of the person on 10/31/12.</p> <p>DELIA GONZALEZ was appointed guardian of the estate on 10/31/12.</p> <p>Letters issued on 10/31/12.</p> <p>This status hearing was set to inform the court of the status of the assets to be received from the estates of the minor's deceased parents Lorena De La Mora (page 9) and Francisco De La Mora (page 10).</p>	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p>3. Need current written status report pursuant to Local Rule 7.5 which states in all matters set for status hearing verified status reports must be filed no later than 10 days before the hearing. Status Reports must comply with the applicable code requirements. Notice of the status hearing, together with a copy of the Status Report shall be served on all necessary parties.</p>
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DOD: 06/06/2012		JEFFREY DAVID HALL and STEPHEN GREGORY HALL , sons, were appointed co-administrators with full IAEA authority without bond on 10/12/2012. Letters issued on 10/12/2012. Status Report of Steven Matlak filed on 11/25/2013 states all inventories and appraisals have been filed with the court. The co-administrators are working on final insurance claims that could impact estate assets. Additionally, attorney's office has recently contacted the insurance company requesting information and status of the insurance claims as well. Once the claims are settled the co-administrators will move forward with petition the court for settlement of the estate.	NEEDS/PROBLEMS/COMMENTS:	
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			Reviewed by: LV	
			Reviewed on: 12/04/2013	
			Updates:	
			Recommendation:	
			File 14 - Hall	

Status Hearing Re: Filing of the Inventory and Appraisal

DOD: 03/29/2013		<p>MARK REIFF was appointed Executor with full IAEA with bond set at \$120,000.00 on 07/08/2013.</p> <p>Bond filed 07/08/2013</p> <p>Letters issued on 09/13/2013.</p> <p>Minute Order dated 07/08/2013 set this status hearing for the filing of the Inventory and Appraisal.</p>	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p>1. Need Final Inventory and Appraisal or need current written status report pursuant to Local Rule 7.5 which states all matters set for status hearing verified status reports must be filed no later than 10 days before the hearing. Status Reports must comply with the applicable code requirements. Notice of the status hearing, together with a copy of the status report shall be served on all the necessary parties.</p>
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		<p>Reviewed by: LV</p> <p>Reviewed on: 12/06/2013</p> <p>Updates:</p> <p>Recommendation:</p> <p>File 15 - Carlson</p>	

		<p>BROOKE A. CASTLE, granddaughter, was appointed conservator of the person and the estate of Patricia Stott without bond on 08/21/2013.</p> <p>Letters issued 08/21/2013.</p> <p>Minute Order of 08/15/2013 set this status hearing for the filing of the Inventory and Appraisal.</p>	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p>1. Need Final Inventory and Appraisal or need current written status report pursuant to Local Rule 7.5 which states all matters set for status hearing verified status reports must be filed no later than 10 days before the hearing. Status Reports must comply with the applicable code requirements. Notice of the status hearing, together with a copy of the status report shall be served on all the necessary parties.</p>				
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File 16 - Stott							

DOD: 10/27/2012		<p>KAREN HANSEN, daughter, appointed administrator with full IAEA authority with bond set at \$175,000.00 on 07/03/2013.</p> <p>Bond filed 07/16/2013.</p> <p>Letters issued on 07/16/2013.</p> <p>Minute order of 07/03/2013 set this status hearing for the filing of the Inventory and Appraisal.</p>	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p>1. Need Final Inventory and Appraisal or need current written status report pursuant to Local Rule 7.5 which states all matters set for status hearing verified status reports must be filed no later than 10 days before the hearing. Status Reports must comply with the applicable code requirements. Notice of the status hearing, together with a copy of the status report shall be served on all the necessary parties.</p>	
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				Reviewed on: 12/04/2013
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		File 17 - Hansen		

Age: 6		CECILIA RODRIGUEZ , Mother and Guardian of the Estate, is Petitioner.	NEEDS/PROBLEMS/COMMENTS: Continued from 11-20-13 Minute Order 11-20-13: Matter continued to 12-6-13. Counsel is to be prepared to discuss at the next hearing the issue as to whether there is a similar account for Christina. As of 12-4-13, nothing further has been filed. 1. Need status of funds. Petitioner originally stated that the minor was expected to receive \$40,000.00 in death benefits. The Court granted guardianship of the estate on 10-29-13 and set status hearing for 12-6-13 for the filing of a receipt for deposit of money into blocked account. 2. Ms. Rodriguez was granted a fee waiver in connection with the original petition; however, upon receipt of funds in the guardianship estate, fees will be due to the court. Therefore, need filing fees of \$870.00 (\$435 for filing of the original petition and \$435 for filing of this petition).
Cont. from 112013		Petitioner states that prior to her husband's death, he was the main provider for the family, and she worked only seasonally in field work and otherwise cared for the children. The following expenses are incurred monthly for the support and/or maintenance and/or education of the minor Christopher: <ul style="list-style-type: none"> Rent: \$300.00 Food and household supplies: \$376.00 Utilities and telephone: \$50.00 Clothing: \$25.00 Child care: \$600.00 (party for Chrystina) Transportation (gas, insurance, and rent on vehicle): \$620.00 	
Aff.Sub.Wit.			
Verified		Petitioner states she, Christopher, and Chrystina currently live with Petitioner's mother. However, this is only a short term option and Petitioner needs to find an apartment where she, Christopher, and Chrystina can live alone. This would be in Christopher's best interest. Petitioner currently works at DFA of California and has to borrow a vehicle to get to work Monday through Friday 6am to 3pm earning \$9.50/hr. This is seasonal work expected to last until November 2013. Petitioner needs to purchase a vehicle so she can provide proper transportation to school, doctor, grocery, etc., for the benefit of Christopher. Petitioner states she is enrolled at Reedley College and will be starting classes in October 2013 for a certificate in business administrative assistant, which will take 12 months if she continues to attend part time.	
Inventory			
PTC		Petitioner requests authority authorizing her to withdraw \$1,000.00 per month from the blocked account without further court order, to be expended for the comfortable and suitable support and/or maintenance and/or education of Christopher Rodriguez until further order of the Court or as the Court may deem proper.	
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			CECILIA RODRIGUEZ , Mother, was appointed as Guardian of the Estate on 10-29-13 with all proceeds (\$40,000.00) to be deposited to blocked account.	NEEDS/PROBLEMS/COMMENTS: Note: On 10-15-13, prior to appointment, the Guardian filed Petition for Authority to Expend Money for Support and/or Maintenance and/or Education of Minor, which was heard on 11-20-13 and continued to 12-6-13. See Page 18A. 1. Need receipt for blocked account or verified written status report per local rules.
	Aff.Sub.Wit.		The Court set this status hearing for the filing of the receipt for blocked account.	
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				Reviewed by: skc
				Reviewed on: 12-4-13
				Updates:
				Recommendation:
				File 18B - Rodriguez

Status Hearing Re: Filing of the Bond

		DIANE THOMPSON , daughter, was appointed administrator with full IAEA and bond set at \$285,000.00. Bond filed 11/20/2013	NEEDS/PROBLEMS/COMMENTS: <u>OFF CALENDAR.</u> Bond filed on 11/20/13
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			Reviewed by: LV Reviewed on: 12/04/2013 Updates: Recommendation: File 19 - Thompson

Probate Status Hearing Re: Conservatee Requesting Termination of Conservatorship

	JACQUELINE SCHEXNAYDER, Maternal Grandmother, was appointed as Conservator of the Person of Jason Woodward with medical consent powers on 7-24-07 and Letters issued on 7-31-07.	NEEDS/PROBLEMS/COMMENTS:	
Aff.Sub.Wit.	A status hearing was held on 4-29-09 re possible removal of the Conservator and appointment of the Public Guardian. Minute Order indicates the Court orders the conservatorship to remain in place. The Court set this status hearing and sent notice to the Conservatee and the Conservator pursuant to the Court Investigator's report filed 10-22-13. Court Investigator Julie Negrete filed a report on 10-22-13.		
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		Reviewed by: skc	
		Reviewed on: 12-4-13	
		Updates:	
		Recommendation:	
		File 20 - Woodward	

1A In the Matter of the Verni Family Trust**Case No. 10CEPR00639**

Atty Marchini, Joseph; Fashing, Peter; of Baker Manock & Jensen (for Petitioner Carmela DeSantis, daughter and Trust Beneficiary)

Atty Baldwin, Kenneth A.; Thompson, Timothy; Cunningham, Nikole; of McCormick Barstow (for Co-Trustees Antonietta "Rosa" Verni, daughter, and Nicola "Nick" Verni, son)

Atty Phillips, John, of Wild, Carter & Tipton (for Leonard "Dino" Verni, son)

Atty Bohn, Jeffrey D., sole practitioner (for Erlinda M. Verni, surviving spouse)

Status Hearing

Leonarda DOD: 7/31/2000	CARMELA DeSANTIS , daughter and Trust Beneficiary, filed a <i>Petition to Remove Trustees; Appoint Receiver; Surcharge Trustees; Deny Trustees Compensation; Impose Constructive Trust on Assets; and Cause Proceedings to Trace and Recover Assets</i> on 7/26/2012. CARMELA DeSANTIS also filed on 7/26/2012 <i>Amended Objections to First Account Current of Trustee, and Objections to Second Account Current of Trustee.</i>	NEEDS/PROBLEMS/COMMENTS: Note: Matter of the Verni Family Trust is set for Court Trial at 10:30 a.m. in Dept. 303. Continued from 10/30/2013. Minute Order states, in pertinent part: Counsel is directed to submit their trial briefs by 12/2/13. The Court will entertain an order by Mr. Marchini allowing Pat DeSantis to be present at the deposition for the limited purpose of providing assistance to him. Pat DeSantis is ordered not to disrupt the deposition proceedings in anyway, verbally or otherwise. Any party who believes Pat DeSantis is disrupting these proceeding may contact the Court. Counsel is directed to advise the Court of the date and time of the deposition so it can make itself available to respond to a call requesting the removal of Pat DeSantis from the deposition. Page 1B is the <i>Petition to Remove Trustees, etc.</i> Page 1C is the <i>Petition to Construe Trust Provision.</i> Page 1D is the <i>Petition to Establish Claim of Ownership in Favor of Trust to Property, etc.</i> Page 1E is the <i>Petition for Review of Accounts and Acts of Trustees.</i>				
Saverio DOD: 5/25/2009						
Cont. from 120512, 010313, 022113, 032213, 052413, 062113, 062813, 083013, 092713, 103013						
Aff.Sub.Wit.	NICOLA "NICK" VERNI , son and Successor Trustee of the SURVIVOR'S TRUST , and ANTONIETTA "ROSA" VERNI , daughter and Trustee of the MERGED FAMILY SUB-TRUST , filed a <i>Response to Petition to Remove Trustees, etc.</i> on 9/27/2012.	Reviewed by: LEG				
Verified			CARMELA DeSANTIS filed a <i>Petition to Construe Trust Provision</i> on 7/26/2012; NICK VERNI and ROSA VERNI filed a <i>Response to Petition to Construe Trust Provision</i> on 9/27/2012.	Reviewed on: 11/27/13		
Inventory					CARMELA DeSANTIS filed a <i>Petition to Establish Claim of Ownership, in Favor of Trust, to Property and for Order Directing its Transfer to the Trustees to Hold in Trust</i> on 8/14/2012; NICK VERNI and ROSA VERNI filed a <i>Response to Petition to Establish Claim of Ownership</i> on 9/27/2012.	Updates:
PTC						
Status Rep.	File 1A – Verni					
Notice of Hrg						
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UCCJEA						
Citation						
FTB Notice						

1A**Dept. 303, 9:00 a.m. Friday, December 6, 2013**

Petitioner Carmela DeSantis' Status Report filed by Joseph Marchini on 10/18/2013 [for the previous Status Hearing] states:

- **Pending Petitions:** Petitioner has several petitions and several objections to trustee accountings pending before the Court in this matter:
 - (a) Petition to (1) Remove Trustees; (2) Appoint Receiver; (3) Surcharge Trustees; (4) Deny Trustees Compensation; (5) Impose Constructive Trust on Assets; and (6) Cause Proceedings to Trace and Recover Assets;
 - (b) Petition to Construe Trust Provision;
 - (c) Petition to Establish Claim of Ownership in Favor of Trust to Property and for Order Directing its Transfer to the Trustees to Hold in Trust;
 - (d) Objections to First Account Current and Report of Trustees and Petition for its Settlement;
 - (e) Amended Objections to the First Account Current and Report of Trustees; and
 - (f) Objections to the Second Account Current.
- **Additional Petitions:** The Trustees have provided, but not filed with the Court, accountings for 2011 and 2012; Petitioner filed on 9/25/2013 objections to them [*entitled Petition for Review of Accounts and Acts of Trustees*]; the objections were served on 10/8/2013;
- **Discovery:**
 - **Document production:** The parties have a disagreement regarding production of records of the late **JOHN BARRUS, ESQ.**; the parties have agreed to submit these documents to the Court for *in camera* review and decision on the disputed issues.
 - **Depositions of percipient witnesses:** Parties agreed on the record at the August [8/30/2013] status conference to waive percipient witness discovery cut-offs; Depositions have begun and are continuing; the depositions of the trustees have been delayed due to illness; the deposition of **DINO VERNI** [Trustees' brother] has been delayed due to the unavailability of his recently retained attorney [**JOHN PHILLIPS**]; it is anticipated that these depositions, at least to the extent they address the issues to be tried on 12/[6]/2013 will be completed by mid-November;
 - Mr. Marchini has been assisted by **PAT DeSANTIS**, Petitioner's husband, at several non-party deposition, as he is familiar with farming in general, with the crops specifically grown on Trust property, with many of the vendors with whom the late Mr. and Mrs. Verni, and now the Trusts, do business; he also understands the types of documents such as invoices, production reports and crop insurance documents, that have been produced by the witnesses in this case; his knowledge and assistance are important aids to Mr. Marchini in the conduct of the deposition;
 - The Trustees have objected to the presence of Mr. DeSantis at their depositions; however, it is well established that, absent the issuance of a protective order for good cause, nonparties may attend a deposition;
 - **Petitioner respectfully requests that the Court order that Mr. DeSantis may be present at all depositions so that he may assist Mr. Marchini in his examination.**
 - **Experts:** The parties have agreed to disclose experts on the sole issue of interpretation on October 31; Petitioner is amenable to allowing a short period of additional time for Dino Verni to disclose an expert because he has only recently retained counsel and because his recently retained attorney has informed Mr. Marchini that he will be out of the country until the end of October; all other experts will be disclosed at a later time once the hearing dates on other issues are known.

1B In the Matter of the Verni Family Trust (Trust) Case No. 10CEPR00639

Atty Marchini, Joseph; Fashing, Peter; of Baker Manock & Jensen (for Petitioner Carmela DeSantis, daughter and Trust Beneficiary)

Atty Baldwin, Kenneth A.; Thompson, Timothy; Cunningham, Nikole; of McCormick Barstow (for Co-Trustees Antonietta "Rosa" Verni, daughter, and Nicola "Nick" Verni, son)

Atty Armo, Lance, sole practitioner (for Leonard "Dino" Verni, son)

Atty Bohn, Jeffrey D., sole practitioner (for Erlinda M. Verni, surviving spouse)

Petition to: (1) Remove Trustees; (2) Appoint Receiver; (3) Surcharge Trustees; (4) Deny Trustees Compensation; (5) Impose Constructive Trust on Assets; and (6) Cause Proceedings to Trace and Recover Assets [Prob. C. 15642, 16420 & 17200]

Leonarda DOD: 7/31/2000	<p>CARMELA DeSANTIS, daughter and Trust Beneficiary, is Petitioner.</p> <p>Petitioner states:</p> <ul style="list-style-type: none"> The VERNI FAMILY TRUST of 1999 was created by SAVERIO VERNI and LEONARDA VERNI on 6/10/1999, and was amended once by Settlers on the following day, 6/11/1999; Leonarda died on 7/31/2000, thereby causing the Trust to be divided into three sub-trusts: the VERNI MARITAL TRUST, the VERNI FAMILY TRUST, (which was amended once during both Trustors' lifetimes), and the VERNI SURVIVOR'S TRUST (copies of Trusts attached as Exhibit A); following Leonarda's death, Saverio amended the SURVIVOR'S TRUST seven times, with the <i>Eighth Amendment</i> (the final) amending the SURVIVOR'S TRUST in its entirety; Saverio served as sole trustee of the three sub-trusts until his death on 5/25/2009, and upon his death the Marital Sub-Trust terminated and its principal was added to the Family sub-trust, which became the MERGED FAMILY SUB-TRUST; Pursuant to the Trust terms, ANTONIETTA ROSA VERNI, daughter, is first appointed and currently serves as Successor Trustee of the Merged Family Sub-Trust; pursuant to the <i>Eighth Amendment</i> to Trust, NICOLA VERNI, son, is first appointed and currently serves as Successor Trustee of the SURVIVOR'S TRUST; The beneficiaries of each of the Sub-Trusts are the Settlor's five children: ANTONIETTA ROSA VERNI (Rosa), NICOLA VERNI (Nick), LEONARD VERNI (Dino), MARIA STANZIALE, and CARMELA DeSANTIS (Petitioner); and specific distributions from the Survivor's Sub-Trust are to ERLINDA MARCIANO VERNI (\$200,000.00) and ST. ANTHONY OF PADUA CATHOLIC CHURCH (\$200,000.00); Following the death of Saverio and Leonarda, the Merged Family Sub-Trust names Rosa as First Successor Appointee, and Maria as Second Successor Appointee; Eighth Amendment provides that upon Saverio's ceasing to act as trustee, Nick will serve as trustee of the Survivor's Sub-Trust; Petitioner seeks a Court order pursuant to Probate Code § 15642 removing Rosa as trustee of the Merged Family Sub-Trust, and removing Nick as trustee of the Survivor's Sub-Trust; Petitioner also seeks a determination by the Court that Dino is not qualified to serve as next successor trustee of the Survivor's Sub-Trust. 	NEEDS/PROBLEMS/ COMMENTS:	
Saverio DOD: 5/25/2009		<p>This matter will be heard at 10:30 a.m.</p> <p>Continued from 10/30/2013.</p> <p>Note: Additional notes pages originally prepared with respect to this petition have been omitted.</p>	
Conf. from 091112, 100212, 120512, 010313, 022113, 032213, 052413, 062113, 062813, 083013, 092713, 103013			
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Citation			
FTB Notice			
Reviewed by: LEG			
Reviewed on: 11/27/13			
Updates:			
Recommendation			
File 1B - Verni			

1C In the Matter of the Verni Family Trust (Trust)**Case No. 10CEPR00639**

Atty Marchini, Joseph; Fashing, Peter; of Baker Manock & Jensen (for Petitioner Carmela DeSantis, daughter and Trust Beneficiary)

Atty Baldwin, Kenneth A.; Thompson, Timothy; Cunningham, Nikole; of McCormick Barstow (for Co-Trustees Antonietta "Rosa" Verni, daughter, and Nicola "Nick" Verni, son)

Atty Phillips, John, of Wild, Carter & Tipton (for Leonard "Dino" Verni, son)

Atty Bohn, Jeffrey D., sole practitioner (for Erlinda M. Verni, surviving spouse)

Petition to Construe Trust Provision [Prob. C. 17200]

Leonarda DOD: 7/31/2000	<p>CARMELA DeSANTIS, daughter and Trust Beneficiary, is Petitioner.</p> <p>Petitioner states:</p> <ul style="list-style-type: none"> The VERNI FAMILY TRUST of 1999 was created by SAVERIO VERNI and LEONARDA VERNI on 6/10/1999, and was amended once by Settlers on the following day, 6/11/1999; Leonarda died on 7/31/2000, thereby causing the Trust to be divided into three sub-trusts: the VERNI MARITAL TRUST, the VERNI FAMILY TRUST, (which was amended once during both Trustors' lifetimes), and the VERNI SURVIVOR'S TRUST (copies of Trusts attached as Exhibit A); The instant petition relates to a provision contained in the SURVIVOR'S SUB-TRUST; over Petitioner's objections, Trustees Nick and Rosa have provided a commingled accounting for the Merged Family and Survivor's Sub-Trusts, which fails to segregate each Sub-Trust's assets, liabilities, receipts and disbursements; The failure to appropriately segregate assets, liabilities, receipts and disbursements among the Sub-Trusts prevents the Court, trustee and beneficiaries from determining the size and holdings of the SURVIVOR'S SUB-TRUST; because the SURVIVOR'S SUB-TRUST will be used to fund the above-referenced equalization provision, any appropriate increase in size to that particular Sub-Trust will allow greater realization of the Trustor's intent and will provide a means for effectuating the equalization of prior distributions; conversely, any inappropriate decrease in the size of the SURVIVOR'S SUB-TRUST will undermine the Trustor's intent and deny the Trustee the ability to effectuate an equalization; The Trustee of the SURVIVOR'S SUB-TRUST believes that distributions made during Saverio's lifetime should not be considered for purposes of the equalization process; Petitioner believes this to be contrary to the language of the provision and intent of the Trustor. <p>Petitioner requests a judicial declaration from the Court concerning the proper construction of Subsection 1, of Section B, or Article IV of the SURVIVOR'S SUB-TRUST [refer to copy of Trust or Paragraph 11 of Petition for exact language requiring apportionment of the residue of the trust estate into equal shares for Trustor's living children.]</p>	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p>This matter will be heard at 10:30 a.m.</p> <p><u>Continued from 10/30/2013.</u></p> <p>Note: Additional notes pages originally prepared with respect to this petition have been omitted.</p>	
Saverio DOD: 5/25/2009			
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		<p>Reviewed by: LEG</p> <p>Reviewed on: 11/27/13</p> <p>Updates:</p> <p>Recommendation:</p> <p>File 1C – Verni</p>	

1D In the Matter of the Verni Family Trust (Trust) Case No. 10CEPR00639

Atty Marchini, Joseph; Fashing, Peter; of Baker Manock & Jensen (for Petitioner Carmela DeSantis, daughter and Trust Beneficiary)

Atty Baldwin, Kenneth A.; Thompson, Timothy; Cunningham, Nikole; of McCormick Barstow (for Co-Trustees Antonietta "Rosa" Verni, daughter, and Nicola "Nick" Verni, son)

Atty Phillips, John, of Wild, Carter & Tipton (for Leonard "Dino" Verni, son)

Atty Bohn, Jeffrey D., sole practitioner (for Erlinda M. Verni, surviving spouse)

Petition to Establish Claim of Ownership, in Favor of Trust, to Property and for Order Directing its Transfer to the Trustees to Hold in Trust (Prob. C. 850, 17200.1)

Leonarda DOD: 7/31/2000 <hr/> Saverio DOD: 5/25/2009 <hr/> Cont. from 100212, 120512, 010313, 022113, 032213, 062113, 062813, 083013, 092713, 103013 <hr/> <input type="checkbox"/> Aff.Sub.W <input checked="" type="checkbox"/> Verified <input type="checkbox"/> Inventory <input type="checkbox"/> PTC <input type="checkbox"/> Not.Cred. <input type="checkbox"/> Notice of Hrg <input type="checkbox"/> Aff.Mail <input type="checkbox"/> Aff.Pub. <input type="checkbox"/> Sp.Ntc. <input checked="" type="checkbox"/> Pers.Serv. <input type="checkbox"/> Conf. Screen <input type="checkbox"/> Letters <input type="checkbox"/> Duties/S <input type="checkbox"/> Objection <input type="checkbox"/> Video Receipt <input type="checkbox"/> CI Report <input type="checkbox"/> 9202 <input checked="" type="checkbox"/> Order <input type="checkbox"/> Aff. Post <input type="checkbox"/> Status Rpt <input type="checkbox"/> UCCJEA <input type="checkbox"/> Citation <input type="checkbox"/> FTB Notice	CARMELA DeSANTIS , daughter and Trust Beneficiary, is Petitioner. <u>Summary of Petitioner's requests for specific relief:</u> 1. Determining that the following is property of the Trust estate: (a) Almond crops: (i) The almond meat inventory on hand at the date of Saverio's death; (ii) all almond crops grown on Trust land since Saverio's death; and (iii) proceeds from the sale of the almond inventory and crops; (b) Olive crops: (i) The olive oil, olive crop and olive inventory on hand at the date of Saverio's death; (ii) all olive crops grown on Trust land since Saverio's death; and (iii) proceeds from the sale of the olive oil, inventory and crops; (c) Other crops (Stone Fruit, Grapes, Etc.): (i) The inventory of other crop grown on Trust land, on hand at the time of Saverio's death but not reported in the Trustee's First Account; (ii) all such crops grown on Trust land since Saverio's death and during 2009; and (iii) proceeds from the sale of the inventory and crops; (d) Other Inventory on Hand: (i) The inventory of firewood and olive oil on hand at the time of Saverio's death but not reported in the Trustee's First Account; (ii) all such items produced from products grown on Trust land since Saverio's death and during 2009; [and (iii) proceeds from the sale of the other inventory;] (e) Proceeds from Sale of Trust Real Property: The money received by Nick and Dino from DeYoung Properties in connection with the option to purchase land and used by DeYoung Properties to actually purchase Trust land which sum is believed to be not less than \$1,000,000.00 ; 2. Directing each of the beneficiaries in possession or holding the property to transfer such property to the Trustees to hold for the benefit of the Trust and the appropriate Sub-Trust(s); 3. Directing each of the beneficiaries in possession or holding any proceeds from the sale or exchange of any of the property to transfer such proceeds to the Trustees to hold for the benefit of the Trust and the appropriate Sub-Trust(s); 4. For judgment in favor of the Trustees of the Trust against any beneficiary who received the Trust property and proceeds, in an amount to be determined and as required to compensate for all of the detriment and damages cause to the Trust; and 5. For treble damages pursuant to Probate Code § 859.	NEEDS/PROBLEMS/COMMENTS: This matter will be heard at 10:30 a.m. <u>Continued from 10/30/2013.</u> Note: Additional notes pages originally prepared with respect to this petition have been omitted.
		Reviewed by: LEG Reviewed on: 11/27/13 Updates: Recommendation: File 1D - Verni

1E In the Matter of the Verni Family Trust (Trust)**Case No. 10CEPR00639****Atty Marchini, Joseph; Fashing, Peter; of Baker Manock & Jensen (for Petitioner Carmela DeSantis, daughter and Trust Beneficiary)****Atty Baldwin, Kenneth A.; Thompson, Timothy; Cunningham, Nikole; of McCormick Barstow (for Co-Trustees Antonietta "Rosa" Verni, daughter, and Nicola "Nick" Verni, son)****Atty Phillips, John, of Wild, Carter & Tipton (for Leonard "Dino" Verni, son)****Atty Bohn, Jeffrey D., sole practitioner (for Erlinda M. Verni, surviving spouse)****Petition for Review of Accounts and Acts of Trustees [Prob. C. 16063(a)(5); 17200(b)(5)]**

Leonarda DOD: 7/31/2000	CARMELA DeSANTIS , daughter and Trust Beneficiary, is Petitioner.	NEEDS/PROBLEMS/COMMENTS: This matter will be heard at 10:30 a.m. 1. File contains no record of notice sent by Petitioner to any interested parties regarding the instant <i>Petition</i> pursuant Probate Code § 17203. An incomplete <i>Notice of Hearing</i> form is attached to the instant <i>Petition</i> . Court may require proof of 30 days' service by mail of <i>Notice of Hearing</i> with a copy of the <i>Petition for Review of Accounts and Acts of Trustees</i> for: <ul style="list-style-type: none">• Antonietta Rosa Verni (Rosa);• Nicola Verni (Nick);• Leonard Verni (Dino);• Maria Stanziale;• Erlinda Verni; and• St. Anthony of Padua Church. 2. Need proposed order pursuant to Local Rule 7.1 which provides a proposed order shall be submitted with all pleadings that request relief. ~Please see additional page~																																																																										
Saverio DOD: 5/25/2009																																																																												
Cont. from	Summary of Petitioner's requests in the Prayer for Relief: <ul style="list-style-type: none">• That each of the Second, Third, and Fourth Accounts Current submitted to Petitioner by the Co-Trustees be disallowed;• That the Co-Trustees, and each of them, be ordered to compensate the estate for any loss caused by their acts and omissions;• That the Trustees be directed to prepare and file a true and full account of their acts and proceedings within such time as may be allowed by this Court; and• That Petitioner be reimbursed attorney's fees and costs.																																																																											
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Petitioner states, continued:

Accounts Provided by the Trustees, continued:

- At Petitioner's request, the Trustees provided Petitioner with a *Second Account Current*, covering the period of 1/1/2010 through 12/31/2010;
- On 7/26/2012, Petitioner filed written *Objections to Second Account Current*, and attached a copy of the *Second Account Current (copy of the Objections to Second Account Current filed by Petitioner on 7/26/2012 attached as Exhibit B)*;
- The *Second Account Current* continued to be deficient in the same respects as noted with respect to the *First Account Current*, among others;
- In spite of Petitioner's repeated objections, the Trustees continue to fail to properly account to Petitioner and other beneficiaries, as required by the terms of the Trust and Probate Code § 16062 et seq., in the *Third Account Current*, covering the period of 1/1/2011 through 12/31/2011, mailed to Petitioner at her request on or about 11/19/2012, and the *Fourth Account Current* covering the period of 1/1/2012 through 12/31/2012, mailed to Petitioner at her request on or about 4/19/2013;
- The manner in which such Accounts are deficient is further described in Petitioner's *Objections to Third Account Current*, attached as *Exhibit C*, and Petitioner's *Objections to Fourth Account Current* attached as *Exhibit D*;
- Article 11, Section 4 of the Trust requires the Trustees to render an accounting upon written request of any beneficiary;
- To date, the Trustees have failed to provide adequate accounts in response to Petitioner's requests pursuant to this provision, thereby necessitating this request that the Court review the Second, Third and Fourth Accounts Current and the acts of the Trustees.

NEEDS/PROBLEMS/COMMENTS, continued:

Note: Petitioner requests the Court **disallow** the accounts in the prayer of the *Petition*; however, based upon the Petitioner's request in the body of the *Petition* that the Court **review** the Second, Third and Fourth Accounts, which has not been granted since that is before the Court for consideration at hearing on 12/6/2013, the subject accounts have not been reviewed; further, the subject accounts have not been filed with the Court by the Co-Trustees, but are merely attached to the instant *Petition* as attachments to Petitioner's previously filed objections. It appears there are Court filing fees for the accountings that have been circumvented for the Second, Third and Fourth Accounts which have not been filed with the Court by the Co-Trustees, and there exists a lack of any statement or reply from the Co-Trustees regarding the content of the accounts attached by the Petitioner.

DOD: 4-11-09	RUBY LOUISE MILLER , was appointed Administrator with full IAEA authority and without bond on 11-13-12 and Letters issued on 3-8-13.	NEEDS/PROBLEMS/COMMENTS: 1. Need petition for final distribution. Probate Code §12200. 2. This estate was opened with a fee waiver. Therefore, fees for the original petition (\$435) as well as the final petition (\$435) will be due prior to any distribution (total \$870). <u>Note:</u> There are 2 heirs: Ruby Louise Miller and Doris Jean Young.
	At the first hearing on appointment on 10-11-12, the Court set this status hearing re filing the first account or petition for final distribution. The status hearing dates were confirmed at the continued hearing on appointment on 11-13-12.	
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FTB Notice		
	Inventory and Appraisal filed 3-8-13 indicates a total estate value of \$1,050.00 (certified cashier's check).	
		Reviewed by: skc
		Reviewed on: 12-4-13
		Updates:
		Recommendation:
		File 21 - Wimbley

Notice of Status Hearing re: Failure to File a First Account or Petition for Final Distribution.

DOD: 02/17/1999	<p>LINDA MIRANDA, daughter, was appointed administrator will full IAEA without bond on 12/17/2002.</p> <p>Letters issued on 12/17/2002.</p> <p>Inventory and Appraisal filed on 08/05/2003 shows an estate valued at \$10,000.00 consisting of real property.</p> <p>Notice of Status Hearing was mailed to Hal Havlisch and Linda Miranda on 10/31/2013.</p>	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p>1. Need current written status report pursuant to Local Rule 7.5 which states in all matters set for status hearing verified status reports must be filed no later than 10 days before the hearing. Status Reports must comply with the applicable code requirements. Notice of the status hearing, together with a copy of the Status Report shall be served on all necessary parties.</p>	
Cont. from			
Aff.Sub.Wit.			
Verified			
Inventory			
PTC			
Not.Cred.			
Notice of Hrg			
Aff.Mail			
Aff.Pub.			
Sp.Ntc.			
Pers.Serv.			
Conf. Screen			
Letters			
Duties/Supp			
Objections			
Video Receipt			
CI Report			
9202			
Order			
Aff. Posting			
Status Rpt			
UCCJEA			
Citation			
FTB Notice			
<p>Reviewed by: LV</p> <p>Reviewed on: 12/04/2013</p> <p>Updates:</p> <p>Recommendation:</p> <p>File 22 - Guadarrama</p>			

Probate Status Hearing for Failure to File the First Account or Petition for Final Distribution

DOD: 2/2/1998	<p>DIANE WINNING was appointed Executor of the estate with full IAEA authority and with bond set at \$7,000.00 on 12/10/2002.</p> <p>Bond filed on 12/16/2002.</p> <p>Letters issued on 12/16/2002.</p> <p>I & A filed on 5/9/2003 showing an estate valued at \$49,899.33.</p> <p>Petition for final distribution was due 12/2003.</p> <p>Status Report filed on 12/3/13 states the Executor is working on assembling all records pertinent to this estate and will require additional time to collect the information to prepare an account, and to obtain the receipts for funds/items disbursed to beneficiaries. The estate will be in a condition to be closed upon the filing of a Petition for Final Distribution and Executor requests that this Court allow 60 days to file such Petition.</p>	NEEDS/PROBLEMS/COMMENTS:
Cont. from		
Aff.Sub.Wit.		
Verified		
Inventory		
PTC		
Not.Cred.		
Notice of Hrg		
Aff.Mail		
Aff.Pub.		
Sp.Ntc.		
Pers.Serv.		
Conf. Screen		
Letters		
Duties/Supp		
Objections		
Video Receipt		
CI Report		
9202		
Order		
Aff. Posting		
Status Rpt		
UCCJEA		
Citation		
FTB Notice		
		Reviewed by: KT
		Reviewed on: 12/5/13
		Updates:
		Recommendation:
		File 23 - Brockway

Atty Seymour, William L., sole practitioner, Visalia (for Diana L. Sanchez, Executor)

**Probate Status Hearing for Failure to File the Inventory and Appraisal and for
Failure to File the First Account or Petition for Final Distribution**

DOD: 8/9/1999		DIANA L. SANCHEZ , daughter, was appointed Executor with Full IAEA without bond on 7/18/2000; Letters issued on 7/20/2000.	NEEDS/PROBLEMS/COMMENTS: 1. Need <i>Final Inventory and Appraisal</i> pursuant to Probate Code § 8800(b). 2. Need first and final account and/or petition for final distribution, or verified <i>Status Report</i> and proof of service of notice of the status hearing pursuant to Local Rule 7.5(B) for the following persons: <ul style="list-style-type: none"> • CULLEN D. BIRCH, son; • GUY WESLEY BIRCH, son; • JON KEITH BIRCH, son; • DIANA LYNN SANCHEZ, daughter (Executor); • Trustee of the GIBSON AND MARIE HUNTER REVOCABLE FAMILY TRUST dated 5/21/1997. Note: Attorney E. Warren Gubler filed a <i>Request for Special Notice</i> on 6/8/2000 in relation to the \$14,102.00 Creditor's Claim of Mission Medical Enterprises dba Hanford Rehab Hospital. Note: Creditor's Claim was filed on 9/26/2000 by Kings Credit Services on behalf of Hanford Community Medical Center for \$63,118.47 .
Cont. from		Amended Petition for Probate filed 6/27/2000 estimated the value of the property of the estate at \$12,000.00 in personal property and \$140,000.00 in real property.	
Aff.Sub.Wit.			
Verified	X	Decedent's Will dated 5/21/1997 devises all property and entire residue of the estate to the Trustee of the GIBSON AND MARIE HUNTER REVOCABLE FAMILY TRUST dated 5/21/1997.	
Inventory	X		
PTC		Final Inventory and Appraisal was due 11/20/2000.	
Not.Cred.			
Notice of Hrg	X	First Account or petition for final distribution was due in July 2001.	
Aff.Mail	X		
Aff.Pub.		Background: Court records show the last document filed in this matter by the Attorney on behalf of the Executor was an <i>Allowance of Creditor's Claim</i> filed 8/18/2000, allowing the claim for \$14,102.00 of Mission Medical Enterprises d.b.a. Hanford Rehab Hospital.	
Sp.Ntc.			
Pers.Serv.		Notice of Status Hearing filed 10/31/2013 set this hearing for failure to file the inventory and appraisal and failure to file a first account or petition for final distribution. Clerk's <i>Certificate of Mailing</i> shows notice of this hearing was mailed to Attorney William L. Seymour at his address listed on the CA State Bar website, and to Executor Diana L. Sanchez at an address in Lemoore, based upon Court records.	
Conf. Screen			
Letters	072000		
Duties/Supp			
Objections			
Video Receipt			
CI Report			
9202			
Order			
Aff. Posting			
Status Rpt	X		
UCCJEA			
Citation			
FTB Notice			

Reviewed by: LEG

Reviewed on: 12/4/13

Updates:

Recommendation:

File 24 - Hunter

Status Hearing Re: The Filing of the First Account and/or Petition for Final Distribution

Age:			NEEDS/PROBLEMS/COMMENTS:
DOD:			
Cont. from			
	Aff.Sub.Wit.		
	Verified		
	Inventory		
	PTC		
	Not.Cred.		
	Notice of Hrg		
	Aff.Mail		
	Aff.Pub.		
	Sp.Ntc.		
	Pers.Serv.		
	Conf. Screen		
	Letters		
	Duties/Supp		
	Objections		
	Video Receipt		
	CI Report		
	9202		
	Order		
	Aff. Posting		
	Status Rpt		
	UCCJEA		
	Citation		
	FTB Notice		
			OFF CALENDAR. First and Final Account filed and set for hearing on 1/14/2014.
			Reviewed by: KT
			Reviewed on: 12/5/13
			Updates:
			Recommendation:
			File 25- Cade

Atty Widdis, Lawrence A.; Widdis, Laura, of Widdis & Widdis, Glendale (for Temporary Conservator, Carol J. Wertheim)

Atty Fanucchi, Edward L.; Mahoney, Michael; of Quinlan Kershaw & Fanucchi (Court-appointed for Conservatee)

**Notice of Motion and Motion of Proposed Conservatee, Ellard V. Youngberg, for
Reconsideration of Court's 10-25-13, Order Appointing Conservator; Memorandum of
Points and Authorities; Declaration of Edward L. Fanucchi**

Age: 91 years		<p>CAROL J. WERTHEIM, daughter, Petitioned the Court requesting appointment as Conservator of the Person with medical consent and dementia powers to administer dementia medications; and of the Estate with bond set at \$255,700.00.</p> <p>Minute Order dated 10/25/2013 from the hearing on the Petition for Appointment of Probate Conservator of the Person and Estate appoints Carol Wertheim as Temporary Conservator of the Person, and states in pertinent part:</p> <ul style="list-style-type: none"> • Dan Fry was present on 7/25/2013 and he is not present here today; • Mr. and Mrs. Youngberg were directed to be present today and they are not; • A representation has been made to the Court that the terms of the mediation agreement have not been adhered to, specifically the installation of the telephone; and • On 7/25/2013, Mr. Fanucchi was ordered to set up an appointment to have Ellard Youngberg examined, which did not take place until 10/23/2013; • The Court appoints Carol Wertheim as temporary conservator of the person with limited powers to facilitate visits as deemed appropriate, ensure the installation of the telephone, look into a hearing device, and to take such actions as deemed necessary to facilitate communication with the staff at the facility regarding meals etc.; • The temporary conservator shall be limited to these powers until further order of the Court; • This temporary conservatorship does not authorize the execution of documents or any estate planning on behalf of Ellard Youngberg; • The Court indicates to the parties that it is issuing this temporary conservatorship based on what is believed to be in the best interest of Ellard Youngberg, and based on the voluntary mediation agreement that was not followed; • The Court orders that the temporary conservatorship expire on 12/6/2013; • Mr. and Mrs. Youngberg are ordered to be present at the next hearing [on 12/10/2013]. <p align="center">~Please see additional page~</p>	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p><u>Continued to 12/10/2013.</u></p> <p><u>Note:</u> Hearing on the <i>Petition for Appointment of Probate Conservator of the Person and Estate</i> is set for 12/10/2013 at 10:00 a.m. in Department 303.</p>
Cont. from 111413, 112113			
Aff.Sub.Wit.			
Verified			
Inventory			
PTC			
Not.Cred.			
Notice of Hrg			
Aff.Mail	X		
Aff.Pub.			
Sp.Ntc.			
Pers.Serv.			
Conf. Screen			
Letters			
Duties/Supp			
<input checked="" type="checkbox"/> Objections			
Video Receipt			
CI Report			
9202			
Order			
Aff. Posting			
Status Rpt			
UCCJEA			
Citation			
FTB Notice			
		<p>Reviewed by: LEG</p> <p>Reviewed on: 12/3/13</p> <p>Updates:</p> <p>Recommendation:</p> <p>File 26 – Youngberg</p>	

Motion of Proposed Conservatee, Ellard V. Youngberg, for Reconsideration of Court's 10-25-13, Order Appointing Conservator; Memorandum of Points and Authorities; Declaration of Edward L. Fanucchi filed on 10/30/2013 states:

- Movant Ellard Youngberg moves the Court for an order reconsidering its 10/25/2013 Order Appointing Conservator and issuing a new and different ruling based upon the Court's consideration of the report of **HOWARD B. TERRELL, M.D.**, and on Dr. Terrell's opinions regarding the mental state and need of Ellard Youngberg for appointment of a conservator;
- The *Motion* is made pursuant to Code of Civil Procedure § 1008(a) and on the ground that new or different facts or circumstances exist in that Dr. Terrell's opinion, after examination of Ellard Youngberg, is that it is not necessary or appropriate to appoint a conservator of the person and estate of Ellard Youngberg, and said new or difference facts or circumstances could not have been presented earlier because Dr. Terrell's opinions had not yet been reduced to formal report as of 10/25/2013, and the attorney for Ellard Youngberg, **MICHAEL MAHONEY**, who attended the 10/25/2013 hearing whereat the subject order was made was unaware of Dr. Terrell's opinions at the time of the hearing;
- The *Motion* is based on the *Memorandum of Points and Authorities; Declaration of Edward L. Fanucchi*; the complete files and records of this proceedings, and upon such other and further evidence and argument as may be submitted to the Court prior to or at the hearing on this motion.

Declaration of Edward L. Fanucchi in Support of Motion of Proposed Conservatee, Ellard Youngberg, for Reconsideration of Court's 10/25/2013 Order Appointing Conservator states:

- The relief requested by Mr. Youngberg by way of the instant Motion is that the Court give due consideration to the report of Howard B. Terrell, M.D., the psychiatrist who evaluated Mr. Youngberg, and in particular, Dr. Terrell's professional opinion after examination of Mr. Youngberg that Mr. Youngberg does not require the appointment of a conservator for his person or his estate;
- Dr. Terrell's report and opinion has not yet been reduced to a formal writing by Dr. Terrell and therefore, was not available at the time of the Court's 10/25/2013 Order Appointing Conservator;
- He learned of Dr. Terrell's opinion during a conversation with him after the examination of Mr. Youngberg on 10/23/2013;
- He had a conflict and was unable to attend the 10/25/2013 hearing himself; as he was operating under the belief that the 10/25/2013 proceeding was merely a status hearing, and not a hearing where the relief sought by the Petitioner's petition might be granted, he sent his associate, Michael Mahoney, to the 10/25/2013 hearing, but he did not inform him of Dr. Terrell's opinion concerning Mr. Youngberg's mental state or lack of need for a conservator; therefore, Mr. Mahoney was not able to convey that information to the Court during the 10/25/2013 hearing;
- Mr. Youngberg will suffer prejudicial and irreparable harm if the Court's order of 10/25/2013 appointing Conservator is not reconsidered in light of Dr. Terrell's report and opinions, and is allowed to stand merely upon the evidence presented by the Petitioner, because appointment of a conservator for Mr. Youngberg without consideration of this evidence supporting the existence of Mr. Youngberg's autonomy and ability to make his own decisions will constitute a denial of Mr. Youngberg's right to due process.

~Please see additional page~

Memorandum of Points and Authorities in Support of Motion of Proposed Conservatee, Ellard Youngberg, for Reconsideration of Court's 10/25/2013 Order Appointing Conservator states:

- **Standard of decision:** A party moving for reconsideration must demonstrate the existence of new or different facts, circumstances or law and an explanation of why those new or different matters were not submitted for the Court's consideration earlier; Code of Civil Procedure § 1008(a);
- **Standard for reconsideration is satisfied in this proceeding:** The proposed Conservatee, Ellard Youngberg, has been evaluated by psychiatrist Howard Terrell, M.D., pursuant to the Court's order; Dr. Terrell is of the opinion that Mr. Youngberg does not require the appointment of a conservator for his person or his estate; Dr. Terrell's opinion could not be presented to the Court at the time of its 10/25/2013 Order Appointing Conservator because Dr. Terrell's report had not been reduced to a formal writing and the attorney who appeared at the 10/25/2013 hearing was unaware of Dr. Terrell's opinion; thus the Court's order appointing the Petitioner, Carol Wertheim, as the Conservator for Mr. Youngberg was based upon incomplete evidence and that order should be reconsidered by the Court in light of the opinion of the expert, who per the Court's order, evaluated Mr. Youngberg and arrived at the opinion that Mr. Youngberg does not need a conservator.
- **Conclusion:** The opinion of the expert psychiatrist who examined Mr. Youngberg at the Court's direction is absolutely necessary and vital for the Court to assimilate and take into account when it renders a decision as important and life-changing as whether or not Mr. Youngberg requires a conservator of his person or estate; since that opinion was not in a proper form to be delivered to the Court on 10/25/2013, and was unknown to the attorney who appeared at what he understood to be merely a status hearing, obviously that opinion was not part of the Court's analysis or decision-making process and reconsideration of the Court's 10/25/2013 Order Appointing Conservator, in light of Dr. Terrell's opinion, is appropriate and necessary to ensure that the best interests and due process rights of Mr. Youngberg are protected;

Mr. Youngberg respectfully requests the Court grant the instant Motion and reconsider its 10/25/2013 Order Appointing Conservator in light of Dr. Terrell's report and opinions.

Note: Declaration of Edward Fanucchi in Support of the Application for Order Shortening Time for Service of Notice of Motion, etc.; (which was granted on 11/5/2013 and set the hearing on 11/14/2013), contains the following documents attached that are not incorporated by reference into the instant Motion for Reconsideration, but are nonetheless briefly summarized in these notes to provide the Court with the information to consider with the instant Motion:

- **Copy of Capacity Declaration completed by HOWARD B. TERRELL, M.D. dated 10/30/2013;** indicates proposed Conservatee has the capacity to give informed consent to any form of medical treatment, and does not have dementia.

~Please see additional page~

Documents attached to *Application for Order Shortening Time*, continued:

- ***Declaration of Donna Friedenber, R.N, Residential Care Director [at Sierra View Homes, Mr. Youngberg's facility], in Support of Motion of Proposed Conservatee for Reconsideration of Court's 10/25/2013 Order Appointing Conservator states:***
 - Mr. Youngberg came to her office noticeably upset and evidencing signs of panic, and told her he needed help and that somebody had to be with him in the room where his daughter had arrived;
 - When Ms. Friedenber arrived in Mr. Youngberg's room, she found Carol Wertheim who promptly told her that she had plugged in a telephone which Dan Fry was supposed to have put in months ago; she told Ms. Wertheim that Dan did buy Mr. Youngberg a telephone for his room, but Mr. Youngberg refused to have it in his room; Mr. Wertheim stated she has a court order that he is to have a telephone, and Ms. Friedenber replied that Mr. Wertheim needed to show her a court order before she can act on it;
 - Mr. Youngberg was up and down nervous and upset during this conversation, and Carol kept telling him to sit down; Ms. Friedenber states she is familiar with the personality and emotional make-up of Mr. Youngberg, and based upon her acquaintance and professional relationship with Mr. Youngberg, she states that the reason Mr. Youngberg is in residential care is because of his physical weakness, not because of mental problems;
 - Ms. Wertheim began talking about a hearing aid, and Ms. Friedenber told her that he was recently examined and hearing aids have been ordered per what Laverne Youngberg told her;
 - Ms. Friedenber decided to notify the state ombudsman because the demands by Ms. Wertheim are in conflict of the desires of Mr. Youngberg, and this is heading toward elder abuse and could lead to a reportable incident by the Home to the Department of Health Care Services;
 - The time spent in the room together was less than two hours, and during the two hours of meeting, Ms. Wertheim kept talking on and on about many things, including that Mr. Fanucchi was not competent to represent her father, and stated she needed a lawyer from the Los Angeles area to get around this "old boys school;"
 - Ms. Friedenber states that Mr. Youngberg has told her on several occasions that his daughter and grandson interrogate him, and he does not like it;
 - Ms. Friedenber states that from her professional experiences and her contacts with Mr. Youngberg, he is a competent person and is not in need of a conservator.

~Please see additional page~

Documents attached to *Application for Order Shortening Time*, continued:

- **Declaration of Ms. Ro Linscheid [Admission and Marketing Director at Sierra View Homes, Mr. Youngberg's facility] in Support of Motion of Proposed Conservatee for Reconsideration of Court's 10/25/2013 Order Appointing Conservator states:**
 - She has come to know Mr. Youngberg quite well as to his choices, his wishes, his personality, and his interests;
 - On 10/25/2013 at ~4:30 p.m., Carol Wertheim came to Ms. Linscheid's office and spent ~1 and ½ hour going from one subject to another about her position with regard to the care of her father;
 - Ms. Wertheim stated she needed to be an advocate for her father, and that his wife, Laverne, and stepson, Dan Fry, were "pulling the wool over his eyes;"
 - Ms. Wertheim stated her father needed someone to conserve his money; Ms. Wertheim stated she wanted the conservatorship to do things for her father, and to prevent Laverne and Dan Fry from controlling her father's finances;
 - Ms. Wertheim stated she had purchased him a telephone, and Ms. Wertheim asked Ms. Linscheid to keep it, and she agreed to do so and stated there would be no change in his wishes to not have a telephone in his room unless Sierra View Homes had a written court order that he must have a telephone in his room, even if he chooses not to have one there;
 - Ms. Wertheim kept telling her over and over that everything she is telling her is confidential;
 - Ms. Linscheid did most of the listening, and Ms. Wertheim did most of the talking;
 - Mr. Youngberg has told Ms. Linscheid on several occasions that his daughter and grandson interrogate him, and he does not like it.

Response to Ex Parte Application; Objection to Constantly Changing Hearing Dates; Objection to Lack of Notice to Proposed Conservatee's Spouse and Other Interested Persons filed 11/18/2013 by Attorney LAWRENCE WIDDIS on behalf of CAROL WERTHEIM states:

- Carol Wertheim through her attorneys, Lawrence Widdis and Laura Widdis, comes with the following responses and objections:
 - **Response to Ex Parte Application** – The court-appointed attorney, **EDWARD L. FANUCCHI**, claims that **ELLARD V. YOUNGBERG** will suffer "prejudicial and irreparable" harm to his person and property if the Court signs the temporary conservatorship order and the clerk issues *Letters*; however, Mr. Fanucchi does not cite even one specific concern for his client and no "property" can be accessed under the order for temporary *Letters*;
 - The Court granted Petitioner temporary *Letters of Conservatorship of the Person* [emphasis in original] with a number of restrictions at a noticed hearing and Petitioner has not threatened to do any act, and will not do any act, outside the powers granted by the Court;

~Please see additional page~

Response to Ex Parte Application; Objection to Constantly Changing Hearing Dates; Objection to Lack of Notice to Proposed Conservatee's Spouse and Other Interested Persons filed 11/18/2013 by Attorney LAWRENCE WIDDIS on behalf of CAROL WERTHEIM, continued:

1. Response to Ex Parte Application, continued:

- At the hearing on 7/25/2013, all [emphasis in original] attorneys, including court-appointed attorney Fanucchi, and the interested persons present agreed to continue the hearing on the conservatorship petition filed by Carol Wertheim to Friday, 10/25/2013; Mr. Fanucchi did not appear on 10/25/2013 but sent a fill-in attorney whose sole apparent mission was to ask for a continuance since Mr. Fanucchi was otherwise "busy;"
- This was not a "status hearing" on 10/25/2013 as Mr. Fanucchi has claimed;
- The clerk has yet to process the temporary *Letters* despite prompt preparation, notice, and mailing to the Court of the *Letters* and Order, nor has the clerk informed Petitioner or her attorneys of any deficiencies with the *Letters* that were submitted;
- Petitioner requests that the Court's ruling be followed;
- Petitioner and her attorneys "played by the rules," received approval of the Court for temporary *Letters*, and not cannot get the *Letters* issued.

2. Multiple Ex Parte Applications / Notices – In response to the rulings of the Court on 10/25/2013, Mr. Fanucchi filed/noticed multiple ex parte applications seeking to reverse the Court's decision on temporary *Letters*; this is unfair to Petitioner;

- Ex Parte hearings should not be used to reverse rulings of the Court made in an attorney's absence because he is otherwise "busy" and after the hearing doesn't like what the Court ruled;
- Petitioner and her attorneys are also "busy" with her high school teaching and their law practice in Southern California, but appeared on 10/25/2013 as agreed and then ordered by the Court;
- Further, the ex parte applications have had FOUR noticed dates [emphasis in original];
- Originally Mr. Fanucchi said it was on 10/31/2013 at 9:00 a.m.; then it moved to 11/12/2013; then it moved to 11/20/2013; an finally it moved to 11/21/2013; an imperative, emergency hearing moved four times is not imperative or an emergency;
- The next "regular" hearing on the conservatorship petition was set for Friday, 12/6/2013, with the agreement of all present at the hearing on 10/25/2013; now Mr. Fanucchi wants the hearing moved to Tuesday, 12/10/2013; this is also unfair to Petitioner who is a high school history teacher and can only "rearrange" her schedule with notice to the school administration; she did get permission for the 12/6/2013 hearing date, but is unsure she can receive permission for 12/10/2013; this is unfair to Petitioner;
- Further, the Court asked Petitioner to facilitate the attendance of her father, the proposed Conservatee; now Petitioner will need to be in Fresno Monday, 12/9/2013 in order to be at her father's residence early in the morning 12/10/2013 to get him transported.

~Please see additional page~

Response to Ex Parte Application; Objection to Constantly Changing Hearing Dates; Objection to Lack of Notice to Proposed Conservatee's Spouse and Other Interested Persons filed 11/18/2013 by Attorney LAWRENCE WIDDIS on behalf of CAROL WERTHEIM, continued:

- 3. Insufficient Notice** – Reviewing the latest papers from Mr. Fanucchi and specifically the *Ex Parte Application's* Proof of Service and the *Notice of Continued Hearing's* Proof of Service, both dated 11/14/2013 (copies attached), notice was not given [emphasis in original] to the spouse of the proposed Conservatee, **LaVERNE YOUNGBERG**, or to the relatives named in the conservatorship petitions such as **JASON WERTHEIM, SAMUEL WERTHEIM, JEANETTE ANTHONY**, and **ILA NELSON**, as Petitioner believes is required under Probate Code § 1822; the notices given by Mr. Fanucchi are deficient.
- 4. Hearing Dates & Conclusion** – The Petitioner respectfully requests that the ex parte application be denied for lack of sufficient notice and lack of urgency and immediate harm; Further, Petitioner requests that the continued hearing of Friday, 12/6/2013 be honored as agreed by all those present at the 10/25/2013 hearing, including the stand-in for Mr. Fanucchi; notice was given to all attorneys and interested parties of the 12/6/2013 hearing date by Petitioner's attorney; in advancing or attempting to advance this hearing to 12/10/2013, insufficient [emphasis in original] notice to all interested persons has been given.

Note: *Proof of Service By Mail* attached to Carol Wertheim's response and objection filed 11/18/2013 indicates a "Supplement to Petition Re: Additional Capacity Declaration, etc." was served by mail to all interested persons on 11/15/2013, rather than the response and objection.